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Adam Smith's Acknowledgments: Neo-Plagiarism and the Wealth of Nations*

by Salim Rashid

University of Illinois

> Scientific innovation proceeds more by disparagement of rivals than by excessive self-praise, perhaps because it appears more modest . . .
>
> The correct way to read Adam Smith is the correct way to read the forthcoming issues of a professional journal.
>
> —George Stigler, *The Economist as Preacher*

I

It is now generally accepted by historians of economic thought that in the nineteenth century Adam Smith's work was much overpraised for its originality and design. In an obvious reference to Smith, both Archbishop Whately and John Stuart Mill spoke of political economy having arisen as a science virtually within men's memories. J. R. McCulloch deepened this impression by his incorrect statement that Smith had successfully combated a general belief that gold and silver were the only real sources of wealth. In the large literature relating to Adam Smith, it is surprising that no one asks whether Smith himself was in any way responsible for this exaggerated estimate of the *Wealth of Nations*. In this essay, I shall consider just how far the *Wealth of Nations* would have been modified if Smith had followed a more liberal practice with respect to his acknowledgements. The charge of plagiarism was raised soon after the *Wealth of Nations* was published and has never been examined in detail. Even scholars who have done much to

* This is a revised version of a paper presented at the History of Economics Society meetings (1986). I am grateful to Royall Brandis, Larry Neal, Murray Rothbard, A. S. Skinner, Paul Uselding and P. P. Wiener for their comments upon this paper. Unfortunately, I must bear sole responsibility for all errors.

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uncover evidence of borrowing, such as Edwin Cannan, have promptly gone on to dismiss out of hand the suggestion that Smith's borrowings could be taken as evidence of plagiarism.[1]

To accuse an academic of unscholarly standards is always a serious matter, and it is essential to emphasize that my thesis is limited to the author of the *Wealth of Nations* rather than to Adam Smith, the professor of Moral Philosophy. Smith's first book, *The Theory of Moral Sentiments,* displays little of the obsession with originality that is apparent in the *Wealth of Nations.* The charge of borrowing was nonetheless raised against the *Theory of Moral Sentiments* by John Gillies, a translator of Aristotle. Even if the claim of Gillies is sustained, the extent of borrowing is minor compared with the *Wealth of Nations.* In a dignified reply to the charge of Gillies, Dugald Stewart set out some useful guidelines in the tracing of antecedents.[2]

> *In studying the connection and filiation of successive Theories, when we are at a loss, in any instance, for a line to complete the continuity of philosophical speculation, it seems much more reasonable to search for it in the systems of the immediately preceding period, and in the inquiries which then occupied the public attention, than in detached sentences, or accidental expressions gleaned from the relics of distant ages.* It is thus only that we can hope to seize the precise point of view, in which an author's subject first presented itself to his attention; and to account, to our own satisfaction, from the particular aspect under which he saw it, for the subsequent direction which was given to his curiosity. In following such a plan, our object is not to detect plagiarisms, which we suppose men of genius to have intentionally concealed, but to fill up an apparent chasm in the history of Science, by laying hold of the thread which insensibly guided the mind from one station to another. By what easy and natural steps Mr. Smith's Theory arose from the state of Ethical discussion in Great Britain, when he began his literary career, I shall endeavor elsewhere to explain. [emphasis added]

It seems natural to assume that the contribution of an author cannot be fully evaluated unless we relate the author's works to the state of knowledge existing at the time that he wrote. Obvious as this point may seem, it has been largely neglected by Smith scholars in recent times. More than fifty years ago, at a time when detailed studies of the seventeenth and eighteenth centuries were much in vogue, Jacob Viner had asserted that on "few details" did Smith's analysis exceed that of his predecessors. Given Viner's judgment, one would have thought that a top priority for scholars would have been to establish, point by point, a comparison between Smith and his predecessors. While some work on these lines has been done, notably by Douglas Vickers on the theory of money and by S. G. Checkland on banking, a comprehensive analysis of this issue is still lacking. The studies of Vickers and Checkland have clearly shown how Smith fell behind his age on a number of issues, so it will not do to claim that Smith "synthesized" the best ideas of his predecessors.

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Jacob Viner, of course, was an admirer of Smith, so it was possible for Smith scholars to accept his judgment in silence. When an unsympathetic critic such as Joseph Schumpeter repeated the same charge in 1954 in more forthright language, a reviewer of the *History of Economic Analysis* charged Schumpeter with envy. Why has the Viner-Schumpeter assertion been ignored in recent evaluations of Smith? Surely the large volume of detailed historical study done between 1900 and 1954 suffices to shed adequate light on this issue.[3] It is important to reach methodological agreement on the question of priorities: If we permit feathers to be freely borrowed, who is to tell the peacock from the crow?

II

In a curious passage in the *Wealth of Nations* Adam Smith appears to support government regulation of the quality of cloth by affixing seals to guarantee quality, a function traditionally undertaken by individuals called aulnagers. The passage occurs immediately after Smith has described the justification for stamping money and is worth quoting in full since it provides a suitable introduction to the thesis of this essay.[4]

> The use of metals in this rude state was attended with two very considerable inconveniences; first with the trouble of weighing; and, secondly, with that of assaying them. . . . Before the institution of coined money, people must always have been liable to the grossest frauds and impositions, and instead of a pound weight of pure silver, or pure copper, might receive in exchange for their goods, an adulterated composition of the coarsest and cheapest materials, which had, however, in their outward appearance, been made to resemble those metals. To prevent such abuses, to facilitate exchanges, and thereby to encourage all sorts of industry and commerce, it had been found necessary, in all countries that have made any considerable advances towards improvement, to affix a public stamp upon certain quantities of such particular metals, as were in those countries commonly made use of to purchase goods. Hence the origin of coined money, and of those public offices called mints; institutions exactly of the same nature with those of the aulnagers and stampmasters of woollen and linen cloth. All of them are equally meant to ascertain, by means of a public stamp, the quantity and uniform goodness of those different commodities when brought to market.

Why did Smith not consider free competition to be a sufficient guarantee of the quality of cloth? After all, Smith supported a system approaching *caveat emptor* even for something so intricate as medicine. Does cloth possess some peculiarity that places it beyond the working of market forces?

At this point, one's attitude towards Adam Smith becomes of importance. The die-hard admirers of Smith simply ignore such passages as, presumably, incomprehensible; more moderate admirers, such as Jacob Viner, look upon Smith as a "realist" who, when faced with practical problems, turned an absent-minded

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eye to his general principles, and solved the problem at hand by whatever means he saw fit.

I would like to suggest another approach—the cynical one. What if Smith was simply an individual of moderate analytical talents who was obsessed with one idea—Free Trade—and boundless ambition, so that he would spend his lifetime ensuring the publication of his ideas as well as forwarding his own role in originating the new system? Each of the cynical attributions—moderate ability and ambition—suggests some consequences. The assumption of moderate ability has two implications. First, that the defense of free international trade would not be presented with complete consistency; second, that other parts of his economic system may well suffer from a good deal of inconsistency. The assumption of ambition implies that Smith would suffer from a Columbus complex, which would lead him to minimize his debt to others or even distort their ideas. A recently discovered letter shows that by 1777 Adam Smith had already gained a reputation for possessing "the greatest hauteur imaginable."[5]

That Smith's jealousy extended even beyond the heart of his beliefs, i.e., the case for free trade, can be seen from his treatment of the division of labor. In his much quoted treatment of this issue, Smith suggested three reasons why the division of labor increased productivity.[6]

> This great increase of the quantity of work, which, in consequence of the division of labour, the same number of people are capable of performing, is owing to three different circumstances; first, to the increase of dexterity in every particular workman; secondly, to the saving of the time which is commonly lost in passing from one species of work to another; and lastly, to the invention of a great number of machines which facilitate and abridge labour, and enable one man to do the work of many.

It comes as something of a shock to find that *all* these reasons have been directly taken from the French *Encyslopedie.* Edwin Canaan is confident that this is Smith's source because the example Smith uses divides pin-making into eighteen operations, as in the French *Encylopedie,* and not twenty-five, as is done by the Englishman Chambers in his *Cyclopedia.* No one expects moral philosophers to be cognizant of technical processes, so it would hardly have hurt Smith's reputation to have acknowledged his sources. In recent years, Vernard Foley has found significant similarities between the division of labor in Plato and that in Adam Smith, especially when we also look at Smith's unpublished writings. (In view of Smith's great love for classical literature such a comparison seems appropriate.) Whether it be a conjectural history of the division of labor, the use of metalworking and clothmaking as examples, the sequence in which economic activities arise, and especially the life of the porter-philosopher Diogenes Laertius as a basis for Smith's famous claim that philosophers and porters are identical in their natural talents—the cluster of examples seems too much for coincidence.[7] The claim that

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Adam Smith borrowed points of importance, wholesale and without any acknowledgement, is therefore not unique to our cynic. Let us see what use he can put it to.

The topic of the division of labor is one of the most celebrated aspects of the *Wealth of Nations*. That Smith's indebtedness on this issue could remain unknown for over a hundred years suggests a real problem for the cynic. Clever borrowers have the least chance of being detected. Only a very careful search will provide significant clues, and the researcher immediately finds a considerable stumbling block in his path. Adam Smith was so intent upon leaving no papers for posterity that he was not content simply to leave instruction that they be burned, which he did, but, not trusting his executors, he sat up in his deathbed and personally supervised the burning of all his papers. The burning of one's papers was not an altogether exceptional practice, but George Stigler has properly noted that "only a man acutely sensitive to the opinion which posterity would hold of him would insist upon such an act."

A careful reading of even such evidence as is available provides circumstantial evidence for the cynic. W. R. Scott noted in 1900 that the order of topics in some parts of the *Wealth of Nations* followed that of Smith's professor at Glasgow, Francis Hutcheson, and Edwin Cannan has explained this as follows:[8]

> Dr. Scott draws attention to the curious fact that the very order in which the subjects happen to occur in Hutcheson's *System* is almost identical with the order in which the same subjects occur in Smith's *Lectures*. We are strongly tempted to surmise that when Smith had hurriedly to prepare his lectures for Craigie's class, he looked through his notes of his old master's lectures (as hundreds of men in his position have done before and after him) and grouped the economic subjects together as an introduction and sequel to the lectures which he had brought with him from Edinburgh.

However, it is one thing to use one's old lecture notes at the beginning of one's career and quite another thing to follow them some twenty-five years later, especially when one has discovered some fundamental and revolutionary truths in the meantime. The admirer would say that Smith was lazy about revision—indeed, Smith himself had said that he found composition difficult. The cynic will retort that Smith's difficulty lay not so much in writing well, for Smith was always capable of considerable eloquence, but in connecting his writings coherently, a difficulty best exemplified by Smith's inability to understand those parts of economics not directly connected with his case for free competition.

Smith's jealousy for his own originality was fierce even at the earliest stages of his career. In 1755 he insisted on bringing his claims to originality to the attention of his contemporaries, perhaps because he felt the presence of some competitors. Dugald Stewart described the occasion as follows:[9]

> There exists, however, fortunately, a short manuscript drawn up by Mr. Smith in the year 1755, and presented by him to a society of which he was then

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> a member; in which paper, a pretty long enumeration is given of certain leading principles, both political and literary, to which he was anxious to establish his exclusive right, in order to prevent the possibility of some rival claims which he thought he had reason to apprehend, and to which his situation as a Professor, added to his unreserved communications in private companies, rendered him peculiarly liable. This paper is at present in my possession. *It is expressed with a good deal of that honest and indignant warmth, which is perhaps unavoidable by a man who is conscious of the purity of his own intentions,* when he suspects that advantages have been taken of the frankness of his temper. On such occasions, due allowances are not always made for those plagiarisms, which, however cruel in their effects, do not necessarily imply bad faith in those who are guilty of them; for the bulk of mankind, incapable themselves of original thought, are perfectly unable to form a conception of the nature of the injury done to a man of inventive genius, by encroaching on a favourite speculation. *For reasons known to some members of this Society, it would be improper by the publication of this manuscript, to revive the memory of private differences;* and I should not have even alluded to it, if I did not think it a valuable document of the progress of Mr. Smith's political ideas at a very early period. Many of the most important opinions in *The Wealth of Nations* are there detailed; but I shall quote only the following sentences:—"Man is generally considered by statesmen and projectors as the materials of sort of political mechanics. Projectors disturb nature in the course of her operations in human affairs; and it requires no more than to let her alone, and give her fair play in the pursuit of her ends, that she may establish her own designs."—And, in another passage: "Little else is requisite to carry a State to peace, easy taxes, and a tolerable administration of justice; all the rest being brought about by the natural course of things. All governments which thwart this natural course, which force things into another channel, or which endeavour to arrest the progress of society at a particular point, are unnatural, and to support themselves are obliged to be oppressive and tyrannical. . . . A great part of the opinions," he observes, "enumerated in this paper, is treated of at length in some lectures which I have still by me, and which were written in the hand of a clerk who left my service six years ago. They have all of them been the constant subjects of my lectures which I read at Edinburgh the winter before I left it, and I can adduce innumerable witnesses, both from that place and from this, who will ascertain them sufficiently to be mine." [emphasis added]

Most scholars have accepted this as clear evidence that Smith had constructed the basic logic of the *Wealth of Nations* at a very early date. The extract provided, however, by no means proves quite this much. What Smith laid claim to was not to an argument but to a hope, and J. M. Keynes is careful in calling them economic "opinions." Until the details of the economic argument have been filled in, Smith has not proceeded one whit beyond the stage where theologians and philosophers had left the case for the system of liberty. Indeed, the available notes of Smith's lectures delivered in 1760–1763 do not provide any arguments for free international trade comparable to those of the *Wealth of Nations.*[10]

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The available evidence, therefore, suggests to the cynic that either in 1750 or 1751 Adam Smith was struck by a vision—that of free international trade promoting both the material prosperity and mutual harmony of nations. It must be admitted that the vision is a noble one and that, if it be a true one, well worth fighting for. Smith's conversation with his contemporaries, especially the merchants, may have convinced him that the case for free international trade would only be laughed at if presented on *a priori,* philosophical grounds. His immediate task, therefore, was to learn how to clothe his thoughts in *their* language, and he was still very much a student, in this sense, when he proposed two issues for discussion before the Select Society, both of which had been subject to considerable recent debate. The first was on the naturalization of foreign Protestants and the second was on the corn bounty. Smith appears to be trying hard at this time to assimilate the economic principles behind the debates that stimulated British economic thought.[11]

Our original problem was that of deciphering why Smith would have supported government regulation of cloth manufacture. As I researched this question, the suggestion arose that perhaps this passage belongs to a pamphlet from which Smith was trying to learn economics and was simply borrowed without consideration of its place in the overall scheme of things. In 1751 there was published in Edinburgh a pamphlet entitled *A Discourse of the Commonweal,* by one W. S., once thought to be William Shakespeare. The original pamphlet dates back to 1580 and was doubtless reprinted because it was felt to have special merit. That Adam Smith would have come across it early in his tutelage seems a reasonable guess. In one part of the *Discourse* the author is led to speak about the properties and advantages of money.[12]

> Because in great traffic and assembly of buyers and sellers it was tedious to tarry for the weighing of these metals and trying, it was thought good that the prince should strike these metals with several marks, for the variety of weights they were, to assure the receiver the same to be no less than the weight it pretended. . . .much like I have known certain towns in England to have done which were wont to make their cloths a certain breadth and length and so set their seals to the same. While they kept the rate truly, strangers did not look on the seal and received their wares, whereby those towns had great vent of their cloth and consequently prospered very well.

Not only does Smith copy the reasons given for the benefits of state regulated coin, he even goes on to copy out the concluding sentiments regarding the sealing of cloth.[13] It remains for the cynic to extend his case. Are there other instances where Adam Smith appears to have borrowed without acknowledgement?[14]

One of the most famous passages of the *Wealth of Nations* is that in which Smith denounces restrictions on the internal corn trade.[15]

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> The interest of the inland dealer, and that of the great body of the people, how opposite soever they may at first sight appear, are, even in years of the greatest scarcity, exactly the same. It is his interest to raise the price of his corn as high as the real scarcity of the season requires, and it can never be his interest to raise it higher. By raising the price he discourages the consumption, and puts every body more or less, but particularly the inferior ranks of people, upon thrift and good management. . . . The popular fear of engrossing and forestalling may be compared to the popular terrors and suspicions of witchcraft. The unfortunate wretches accused of this latter crime were not more innocent of the misfortunes imputed to them, than those who have been accused of the former. The law which put an end to all prosecutions against witchcraft, which put it out of any man's power to gratify his own malice by accusing his neighbour of that imaginary crime, seems effectually to have put an end to those fears and suspicions, by taking away the great cause which encouraged and supported them. The law which should restore entire freedom to inland trade of corn, would probably prove as effectual to put an end to the popular fears of engrossing and forestalling.

Smith's unqualified condemnation of the penalties on such activities as forestalling and regrating were widely influential in the 1790s.

The recommendation that all restrictions on the internal corn trade be removed was certainly not unique to Smith. Already in the 1680s Sir Josiah Child had drawn attention to the ill effects of regulations and by the mid-eighteenth century such complaints became increasingly frequent and were repeated with increasing clarity and force. In view of the many economists who supported a completely free internal trade in corn, Smith failed in his duty as a scholar by remaining entirely silent about his predecessors on this issue.

Our immediate concern, however, is whether Smith was more closely indebted to some of his predecessors than indicated simply by his adoption of their ideas. In this connection, a pamphlet written by an anonymous corn dealer, *Reflections on the Present High Price of Provisions,* is of interest. The pamphlet begins with a confident claim of the generally beneficient role of prices:[16]

> The wisdom of many modern governments has been exercised in laying open trade and encouraging agriculture, thereby providing in the most effectual manner, for the proper supply of provisions; for, on the experience of the past and present times, it appears, that after sufficient laws are framed against frauds and deceits, the buyers and sellers may be left to settle the prices of all things between themselves. According to the maxim of Seneca, ''No matter what the price is, so the buyer and seller agree upon it;'' the magistrate has no occasion to interfere; for the nature of trade requires that both the contracting parties should look about them, if they would not be deceived.

The author then deals in detail with all the difficulties involved in attempts to interfere in the grain market. What is remarkable is the language with which the author describes the mentality of those who insist upon such restrictions.[17]

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> Although the belief of inchantments does not so much prevail in this country as formerly, yet 'tis observable, the repeal of the act against witchcraft could not be accomplished till the reign of George II. Some recent instances of the common people's zeal against witchcraft, seem to shew, that the repeal of that act has not removed the prejudices of many ignorant and obstinate bigots among all ranks of people.
>
> The difficulty which occured to our forefathers, in discovering the artifices of the engrossers and forestallers, is perhaps the reason, that the king's commission for the appointment of justices of the peace, inchantments, sorceries, arts magic, forestallings, regratings, and ingrossings are ranged together, as offences of a similar nature, because they were committed by wicked persons, in a manner both amazing and unknown.
>
> It is probably in compliance with these prejudices, that justices of the peace are still directed by the king's commission, fully to enquire and inform themselves of the truth and reality of these offenses, viz. sorceries, engrossings, &c. on the oaths of good and lawful men.
>
> Fortunately for the reputed witches, they have not now so much to fear from the laws as the reputed engrossers; for where there can be any pretence for persecution, there will always be found some persons on pernicious principles, who will promote base interests by popular delusions.

In reviewing this pamphlet the *Critical Review* gave it praise and repeated the thought that the laws against forestalling were reminiscent of the laws regarding witchcraft. At this point it is not just the ideas but even the language of the *Reflections* that is being copied by Smith![18] One point should be noted regarding Smith's borrowings from the *Discourse* or the *Reflections:* They are from authors whose general bias is definitely similar to his own. It would appear that Smith tried to "adopt" the economics of those authors who revealed a kindred philosophy, without much caring whether the overall economic structure was consistent.

Excluding those cases where there is some direct textual similarity, there is also an interesting case in which Smith's language narrows down the possible pamphlets he could have referred to. After having characterized the mercantile system as one that confused wealth and money, Smith appears to qualify his characterization near the end of the chapter.

> Some of the best English writers upon commerce set out with observing, that the wealth of a country consists, not in its gold and silver only, but in its lands, houses, and consumable goods of all different kinds. In the course of their reasonings, however, the lands, houses, and consumable goods seem to slip out of their memory, and the strain of their argument frequently supposes that all wealth consists in gold and silver, and that to multiply those metals is the great object of national industry and commerce.

Who could Smith be referring to? One possibility is Sir William Petty, whose *Political Arithmetik* bears some resemblance to Smith's description. However, Smith speaks of "authors" in the plural and Petty does not quite fit Smith's characterization, so we should look for other pamphleteers. In this connection,

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the following paragraph of Eli Heckscher is worth noting. Heckscher is considering the same issue discussed by Smith—how far the Mercantilists could be said to have identified money with wealth—and is led to describe his opinion of the highly praised *Considerations upon the East-India trade.*[19]

> The development of the author's reasoning runs as follows: the true and primary wealth both of individuals and of the whole people consists of meat, bread, clothing and houses—the conveniences as well as the necessities of life; progress and improvement lie in the secure possession and the enjoyment of these things. They are wanted for their own sake; money is regarded as wealth because it will buy them. Precious metals are secondary and dependent; clothing and goods are real and primary riches. . . . This reasoning appears so clear that misunderstanding seems impossible. This is not so, however, for the pamphlet continues to the effect that everything which is consumed in England is loss—it can reap no profit for the country. . . . The author's talk of meat, bread, clothing and houses as the real riches is forgotten; such things are intended for use within the country and, indeed, this is scarcely to be avoided.

The similarity in the independent evaluations of Heckscher and Smith suggests that the *Considerations* is indeed one of the authors Smith was familiar with. This is significant because the *Considerations* has been considered one of the most brilliant pamphlets of the pre-Smithian age. Lord Macaulay called its author "an Achilles without a heel," and such sentiments have been echoed by many scholars. The specific points on which the *Considerations* is superior are the division of labor and the role of machinery. Of all analysts of the division of labor prior to the *Wealth of Nations,* the *Considerations* is the most explicit in relating the division of labor to the size of the market. Borrowing is hinted at by J. R. McCulloch, who said that the author Henry Martin has "set the powerful influence of the division of labour in the most striking point of view, and has illustrated it with a skill and felicity which even Smith has not surpassed, but by which he most probably profited." In view of the fact that the pamphlet was reprinted (with a new title) in 1720 and that copies of both editions are to be found in Joseph Massie's *Collection,* the current belief that the pamphlet was ignored appears unfounded. Insofar as Smith knew this pamphlet, whatever limited originality he could have claimed for his analysis of the division of labor, is now called into question. In addition, Smith must also be held responsible for having failed to present in the *Wealth of Nations* the fine analysis of machinery in the *Considerations.*[20]

III

In gauging Adam Smith's indebtedness in Sections III and IV, I shall try to remain on the safe side of referring only to works that Smith definitely knew of or those which we have good reason to believe that he had read because they

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were in his library. In section IIIA, Smith's relationship with three of his Scottish predecessors and contemporaries is considered, while section IIIB deals with two Anglican clergymen-economists, Bishop George Berkeley and Rev. Josiah Tucker. The relevance of Smith's contemporaries should be obvious, while the clergymen-economists are important because the dominant philosophical approach to the market, prior to the rise of the Scots, was provided in considerable measure by theologians.[21]

That Smith made his acknowledgements with less than generosity has already been noticed by several authors, e.g., Joseph Schumpeter, who states that this was the practice of the age. This is incorrect. If we turn to some of the works quoted in the *Wealth of Nations,* such as Charles Smith's *Tracts* on the corn trade or John Smith's *Memoirs* on wool, we shall find them scrupulous in acknowledging their intellectual debts. Among Smith's contemporaries, Gibbon is well known for the care with which he provides references, and the same is true of the best known agricultural writer of Smith's day, Arthur Young. The *Monthly Review* even takes John Campbell to task for providing too many references, a criticism that clearly indicates that the acknowledgement of other scholars' works was by no means uncommon. Two authors Smith expressed admiration for in *Wealth of Nations* are Sir Mathew Decker, "an excellent authority," and the "very accurate and intelligent" Rev. John Smith. Whether we look at Decker's *Essay* or Smith's *Memoirs of Wool,* we find a plenitude of references to the most eminent names in British economic thought.[22] Perhaps the most interesting testimony to the contemporary practice of being careful about sources is provided by Smith himself in his *Lectures on Rhetoric:*[23]

> Historical truths are now in much greater request than they ever were in the ancient time. One thing that has contributed to the increase of this curiosity is that there are now several sects in religious and political disputes which are greatly dependent on the truth of certain facts. This it is that has induced almost all historians for some time to be at great pains in the proof of those facts on which the claims of the parties they favoured depended.

Among Smith's famous contemporaries only David Hume can be faulted with a reluctance to state acknowledgements, for Hume failed to give credit to either James Oswald for his correct statement of the influence of a growing quantity of money or to Rev. Josiah Tucker for having persuaded Hume that the prosperity of different nations was quite compatible. As these are among the two most valuable contributions of Hume as an economist, it seems that Hume's fame in this sphere would be considerably diminished by a proper allotment of priorities. Having mentioned Oswald, it is worth adding that Smith was indebted to Oswald for the significant suggestion that price should be split up into its component parts of wages, rents, and profits. R. L. Meek's attribution of prescience to Smith for having "introduced" profits as a separate component of national income needs to be modified in this light.[24]

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A. A more important omission is the failure to give due credit to Rev. Francis Hutcheson. When Adam Smith entered Glasgow College in 1737, he came into contact with one of the outstanding intellects of eighteenth century Britain, Francis Hutcheson. The lectures of Hutcheson mark a turning point in the intellectual life of Scotland. While some groundwork had been laid by the lectures of Gershom Carmichael, Hutcheson's predecessor, there is general agreement that it was the vivacity and force of Hutcheson's lectures, the first Scottish professor to lecture in English instead of Latin, that put a new face on learning in Scotland. The extant publications of Hutcheson would appear to be a pale reflection of his abilities since everyone agrees that the principal source of Hutcheson's impact was his lectures. Nonetheless, even the available writings of Hutcheson are of such quality that W. L. Taylor has come to the conclusion that[25] "no other man . . .did as much to guide the development of his [Smith's] intellectual awakening and mold his ideas as did Francis Hutcheson."

To begin with, let us remind the reader of W. R. Scott's demonstration that the order of several of Smith's lectures was patterned after those of Hutcheson, as well as Scott's conjecture that Smith did what many a subsequent teacher has done at the beginning of his career—use his own student lecture notes as the basis of his teaching. But Smith's indebtedness goes beyond that of adopting a general plan. Consider Hutcheson's remarks on the role of demand in setting market prices:[26]

> When there is no *demand,* there is no price were the *difficulty* never so great; and were there no difficulty or labor requisite to acquire, the most universal demand will not cause a price; as we see in fresh water in these climates. Where the demand for two sorts of goods is equal, the prices are as the difficulty. Where the difficulty is equal, the prices are as the demand.

When Hutcheson comes to compare the standard of living at different times, he considers that a comparison with the price of labor forms the best deflator. Smith was later to adopt the same measure, having meanwhile turned an approximation into an "invariable measure." The most striking debt of Smith to Hutcheson is probably the latter's clear statement of the principles underlying Say's Law. Without some way of asserting that luxury expenditures were not essential for full employment, Smith would have been hard-pressed to justify a system of accumulation and growth based on frugality. Hutcheson provided just such an argument in his reply to Mandeville's claim that robbers were beneficial in providing employment to locksmiths.[27]

> Who needs be surprised that luxury or pride are made necessary to public good, when even theft and robbery are supposed by the same author [Mandeville] to be subservient to it, by employing locksmiths? Were there no occasion for locks, had all children and servants discretion never to go into chambers unseasonably, this would make no diminution of manufactures; the money saved to the housekeeper would afford either better dress, or other

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> conveniences to a family, which would equally support artificers, even smiths themselves might have equal employment. Unless all men be already so well provided with all sorts of convenient utensils, or furniture, that nothing can be added, a necessity or constant usefulness of robbers can never be pretended, any more than the public advantages of shipwrecks and fires, which are not a little admired by the author of the fable.

It has often been pointed out by scholars that in a letter to the University of Glasgow Smith referred to the[28] "never to be forgotten Dr. Hutcheson," as though this made amends for the omission of any mention of Hutcheson in the *Wealth of Nations*. The general public could not, after all, be expected either to know of a *private* letter to the University or be able to read into it Smith's extensive debts to Hutcheson.

The author who could have most expected that Smith would have referred to him but who was nonetheless passed over in complete silence was Sir James Steuart. In a letter to William Pultney, Smith spoke condescendingly of Steuart's *Inquiry*, perhaps the first systematic treatise on economics in English to be laid before the public: "I have the same opinion of Sir James Steuart's book that you have. Without once mentioning it, I flatter myself that any fallacious principle in it will meet with a clear and distinct confutation in mine."[29] Later Smith deepened to the wound by saying that he had not come across any intelligible account of the Bank of Amsterdam written in English, thus implying that Steuart's own description of that bank was unintelligible![30]

Although Smith's total neglect did not make Steuart's name a lost one in the last quarter of the eighteenth century, it was nonetheless a considerable blow. Modern commentators, on the other hand, have found much to admire in Steuart. His methodological eclecticism, for example, indicates a more delicate understanding of the specificity of economic policy than is available in Smith. Steuart has a perceptive discussion of the difference between expenditures for subsistence and expenditures to maintain one's social rank, much like Thorstein Veblen. Steuart also provides a good description of economic transactions such as services, which were not embodied in some material output, while his discussion of price formation is worth quoting:[31]

> In proportion . . .as the rising of price can stop demand, or the sinking of price can increase it, in the same proportion will competition prevent either the rise or fall from being carried beyond a length.

Both Smith and Steuart shared a belief in the resilience of the market economy, and it is noticeable that Smith uses the easy reemployment of disbanded soldiers after the Seven Years' War, as had Steuart nine years earlier. Not all Smith's contemporaries were happy with Smith's literary manners, and one of Steuart's obituaries makes a thinly-veiled reference to Smith as a plagiarist!

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Robert Wallace was one of the royal chaplains of Scotland and a well-known figure in Scottish intellectual circles. Hume's long essay "On the Populousness of Ancient Nations" was originally meant as a reply to an unpublished essay by Wallace on the same topic. The publication of Hume's essay forced Wallace to publish his hitherto unpublished manuscript. Later, Wallace was to write another essay on population in which he envisioned a communist Utopia and then forecast its downfall due to the growth of population. The anticipation of the Malthusian population thesis is remarkable, save for Wallace's prediction that the Utopia would be doomed over a relatively long period of time, a century or two, whereas Malthus envisioned the same failure as occurring within a decade or two. There can be little doubt that Adam Smith was familiar with the writings of Wallace. In 1758 Wallace published a pamphlet entitled *Characteristics of the Present Political State of Great Britain,* in which he combatted various notions suggesting that Great Britain was on the decline. One of the views with which Wallace took issue was Hume's opinion that a nation whose public debts were on the rise must decline. More pertinent to Adam Smith, however, is Wallace's statement on the true source of wealth:[32]

> In our inquiries concerning wealth, it is usual to consider silver and gold as the most substantial riches, as well as the most necessary means of procuring them: but neither the one, nor the other, is true. Industry is the chief mean of acquiring riches.

A little later, Wallace provides a market-based argument to show that high prices do not necessarily indicate poverty among a people:[33]

> In a nation where there is a greater stock of corn, of cattle, and of all sorts of commodities, than formerly, if at the same time the prices of those goods, instead of being diminished, are increased, there must be more buyers. If it were otherwise, the prices would fall. Again, if there are more buyers, either there must be more people in the nation for home consumption; or, if there is not, there must be a greater export and foreign trade; upon which supposition the nation must be richer. Which was to be proved.

When Wallace has to consider the effect of luxury on a nation, he does not deny that some individuals may ruin themselves by their excesses, but he denies that the bulk of any nation can ever be so far lost to the charms of frugality. The similarity to Adam Smith's own argument in this issue is striking:[34]

> The bulk of an industrious people never were, and, according to the common principles of human nature, never will be disposed to exceed their revenues. Such people are commonly attentive to gain. The love of profit is stronger with them, than the love of pleasure. In consequence of this they live within bounds, and the far greatest part of them are frugal. It is chiefly among men of great fortunes, who gain nothing by labor, that we shall find the disposition to extravagant expense. In an industrious nation these form but a small body.

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In addition to the above passage, one may note the close correspondence between Wallace's argument on the competitive advantage of rich nations and those of Adam Smith on the same topic in first draft of the *Wealth of Nations* (although they were not subsequently incorporated into the *Wealth of Nations*).

In 1764 Wallace wrote *A View of the Internal Policy of Great Britain*, in which he clearly adopts several economic positions considered to typically "Smithian." Thus Wallace contrasts money and real wealth, notes that the greatest trade of a republic is the internal trade, points out that the price of labor is not always governed by the price of provisions, and attacks the East Indian trade for having caused so much suffering.[35]

B. The one author who comes in for the most consistent praise in Wallace's *Characteristics* is George Berkeley, Bishop of Cloyne, and author of the *Querist*, a brilliant and incisive pamphlet on the economic problems faced by a poor country—Ireland. Wallace remarks that the *Querist* "deserves well to be perused by every lover of his country, and of mankind." Let us see what Berkeley has to say on the true sources of wealth:

> Whether the four elements, and man's labor therein, be not the true source of wealth.

And on the relationship of gold and silver to the true source of wealth:[36]

> Whether there be not a measure or limit, within which gold and silver are useful, and beyond which they may be hurtful?
>
> Whether a discovery of the richest gold mine that ever was, in the heart of this kingdom, would be a real advantage to us?

Who does Berkeley think should be the true beneficiaries of economic policies?[37]

> Whether a people can be called poor, where the common sort are well fed, clothed and lodged?
>
> Whether in all public institutions, there should not be an end proposed. . . . Whether this end should not be the well-being of the whole? And whether, in order to achieve this, the first step should not be to clothe and feed our people?

I would take up too much space to consider Berkeley's advanced views on the nature of money and banking; suffice to say here that modern scholarship finds more to admire in Berkeley's monetary theories than in those of Hume or Smith.

Since Berkeley died as Bishop of Cloyne in 1753, one might ask whether Smith would in fact have known of Berkeley. Even if one discounts the fact that Smith owned copies of both the *Querist* and Berkeley's collected works, a variety of circumstantial evidence suggests that Berkeley would have been known to Smith in the 1740s. To begin with, it should be pointed out that Berkeley was perhaps most famous in his own day as the philosopher of immaterialism. This curious theory so stimulated the youth of Scotland that a club was formed in Scotland

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in 1740 to discuss and propagate Berkeley's views. It is unlikely that Smith, who was just leaving Glasgow College, would be unaware of this club. Berkeley's *Querist* was first published in 1736, and it is more than probable that the *Querist* was also extensively discussed by the young intelligentsia of Scotland in the 1750s. When Adam Smith went off to Oxford in 1744, he suffered a period of depression. In a letter to his mother in 1744 Smith writes that he was feeling better after having taken tar water. In 1743 Berkeley had written a pamphlet, *Siris,* on the virtues of tar water as a medicine, and this publication helped fuel a popular enthusiasm for tar water. And if Smith did read *Siris,* is it not likely that he would have sought out other pamphlets by the same author, especially if they related to trade? Finally, we find that the *Querist* was reprinted twice in Scotland in the 1750s by printers familiar to Smith; the fact of such reprinting shows an intense interest in Berkeley among the Scottish reading public, and the printers can be reasonably supposed to have brought their reprints before the professor who had to lecture on such topics. And yet, the only contemporary author Smith quotes as critical of mercantile ideas, whether in his *Lectures* or the *Wealth of Nations,* is David Hume.[38]

The Rev. Josiah Tucker was a contemporary of Smith who had achieved considerable fame as a writer on commercial affairs. Tucker had written in support of naturalizing foreign Protestants and Jews and against the monopoly of the Turkey trade. Some of his works had even been translated into French. In 1758 he engaged in a controversy with David Hume on the question of whether a country that acquired a balance of gold through trade must necessarily lose it again. It is agreed by most modern scholars that Tucker had the best of Hume in this debate and that Hume's liberal views on international trade were substantially influenced by Tucker. Smith must have known of Tucker through Hume; in any case, Tucker published his side of the debate in 1774, two years before the publication of the *Wealth of Nations.* Tucker was also the principal advocate for a complete separation of the North American colonies from the mother nation, an opinion that only earned him a reputation as a visionary. Smith owned most of Tucker's tracts, yet made no mention of him either in 1776 or ten years later, when he was revising the *Wealth of Nations* at a time when the separation Tucker advocated had occurred. Tucker, it may be pointed out, is the only author singled out by James Bonar as having been unfairly neglected by Smith.[39]

Tucker was a vigorous advocate of the complete freedom of internal trade, and an example of his arguments may be seen from his attack on attempts to fix wages and prices by law.[40]

> The statutes regulating wages and the price of labor are another absurdity, and a very great hurt to trade. . . . Nay, how indeed can any stated regulations be so contrived as to make due and reasonable allowance for plenty or scarcity of work, cheapness or dearness of provisions . . . the goodness or badness of the workmanship . . . the unequal goodness of the material

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> to work upon, state of the manufacture, and the demand, or stagnation, at home or abroad?

In consistency with the above, Tucker was against any interference in markets that had become temporarily glutted. Indeed, in Tucker's statements about the ability of the economy to reemploy displaced workes, some scholars have seen an early version of Say's law.[41]

Tucker's view on the benefits of labor-saving machinery is also unequivocal. The great lowering of price after the introduction of such machinery leads to large increase in demand for the product, and this in turn leads to large increase in demand for the product, and this in turn leads to the reemployment of those laborers previously dismissed, reemployment in making and tending machines and in wholesaling and retaining the improved product. Apart from glossing over the transitional period, Tucker's discussion is complete.[42] It is also much more to the point than the corresponding discussion in Book II, Chapter II, of the *Wealth of Nations.*

Tucker's view of the potency and role of self-interest are as sophisticated as any to be found in the economic literature of the eighteenth century. First, Tucker believed strongly in the power of self-love to normally produce beneficial results.[43]

> But what is the Office of Reason? Not surely to extinguish Self-Love; that is impossible: And it might even be questioned whether it would be right to attempt to diminish it: For all Arts and Sciences, and the very Being of Government and Commerce, depend upon the right exertion of this vigorous and active Principle . . .

Second, Tucker realized that, left to itself, self-love degenerated very rapidly into a spirit of monopoly.[44]

> . . . were this Passion to Proceed without Direction or Control, it would in a great measure defeat its own Ends. For Self-Love is narrow and confined in its Views, and admits of no Sharers or Competitors, where-ever it can exclude them. Therefore when you see a Set of Individuals forming Combinations and exclusive Societies, you may observe, that the Members of this exclusive Company are still Rivals and Competitors among themselves; and after having excluded the rest of their Fellow-Subjects, would, in the next Place, exclude each other, if they could.

The function of the law, however, was precisely to direct self-love so that its operations would lead to beneficial results.[45] ". . . the main Point to be aimed at, is neither to extinguish nor enfeeble Self-Love, but to give it such a Direction, that it may promote the public Interest by pursuing its own: And then the very Spirit of Monopoly will operate for the Good of the Whole."

Tucker clearly perceived the problems inherent in letting self-love run its course, and he suggested a solution—judicious interference by the state. He also noted that such interference would, in general, harm some particular interests and suggested that such interests should give way before the public good. It is worth

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noting that Tucker explicitly deals with the issue of designing institutions so as to let self-interest drive the economy to favorable goals. His treatment of the institutional background of a market economy is more useful than the corresponding work of Smith, who deals with such issues on an ad hoc basis and does not view the general problem.[46]

IV

Let us turn from Smith's neglect of earlier economic writers to his treatment of contemporaries who criticized the *Wealth of Nations.* Shortly after the publication of the *Wealth of Nations,* two good critiques of various doctrines in that work were published. The first was by Thomas Pownall, former governor of Massachusetts, and was directly addressed to Smith.[47] Pownall made several pointed criticisms of Smith, principally because he was worried that Smith's book would soon become a standard text and its errors thereby propagated. Pownall questions whether the propensity to truck is an "innate propensity" of human beings and whether labor can properly be considered as an invarable measure of value. In a curious reversal of roles, Pownall takes Smith to task for distinguishing between natural and market price. The market price was *the* natural price according to Pownall, and distinguishing between the two could only encourage someone to interfere with the market and try to establish the "natural" price. Pownall opposes Smith's view of money purely as a circulating medium and considers that the neglect of money's role as a repository of value can encourage not only the use, but also the excessive use, of paper money as a substitute for gold and silver. His own experience in the colonies led Pownall to believe that his fears on this issue were well founded. Pownall tries to analyze the impact of an influx of money, paying particular attention to the lag with which the prices of the agricultural sector rise. On the basis of this lagged effect, Pownall supported some measure of protection for agriculture, and, in particular, to a defense of the county on corn. Some of Pownall's most perceptive comments concern infant industries. he agrees that restraining such imports "as cannot be made so cheap at home" is not a good policy, but this is not how such protective legislation is designed. When the industry to be supported is skillfully chosen, society soon recovers the initial costs of support.[48]

> Although these efforts, thus artifically forced, are at first disadvantageous and unprofitable to the community: yet by his industry being so directed to, and so supported in a line of labor, which he could not naturally have gone into, nor could have supported himself by, these first efforts, which the community pays for, do by repeated exercise produce skill, which in time will work as well, and enable the home manufacturer (if his labor is employed on native home rude produce) to sell as cheap, and soon cheaper, than the foreign workman and manufacturer; his labor then will become profitable to himself, and advantageous to the community of which he is a part. It was

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> thus our woolen and hardware manufacturers were first encouraged and supported.

In later editions of the *Wealth of Nations* Smith makes some slight changes to his text, without indicating any acknowledgement to Pownall. None of Pownall's substantive criticisms are taken note of by Smith in his revisions, but Smith nontheless wrote to Andreas Holt that[49]

> . . . I flattered myself that I had obviated all the objections of Governor Pownall. I find, however, he is by no means satisfied, and as Authors are not much disposed to alter the opinions they have once published, I am not much surprised at it.

Smith appears unaware that exactly the criticism he makes of Pownall is applicable to himself.

A second criticism of a doctrine supported in the *Wealth of Nations* was offered by James Anderson, an agricultural economist who is now justly famous for his original exposition of the theory of rent. In his *Enquiry into the Nature of the Corn-Laws* Anderson opposed Smith's doctrine on the corn bounty. With commendable analytical exactness, Anderson divides agricultural land into various grades, which he calls A,B,C,D,E, etc. He then shows that the less fertile fields will not be cultivated unless the price of corn (or oats) rises to a certain level. Anderson concludes that[50]

> rents are not at all arbitrary, but depend on the market price of grain; which in its turn, depends upon the effective demand that is for it, and the fertility of the soil where it is raised: so that the lowering of rents could never have the effect of rendering grain cheaper.

This is a very lucid argument to show that agricultural rents are price-determined, not price-determining. Had Smith seen fit to either accept or reject publicly Anderson's analysis, the corn model of rent determination would at least have entered economic analysis well before Ricardo, Malthus, or West.

In a letter in 1780 Smith referred to Anderson as "a very diligent, laborious, honest man" but claimed that he had made a verbal alteration in response to Anderson's seventy-five page argument and this sufficed to take away "the foundation of the whole argument of Mr. Anderson."[51] This tour de force of brevity seems to have given Smith second thoughts because he apparently told Dr. Cullen at a later date that Anderson deserved a reply. In 1790 Anderson was full of good will toward Smith and spoke highly of him in the *Bee*, a periodical that he edited, but as time went on he became bitter about Smith's refusal to accept his arguments, and in 1801 he referred to Smith as a "peevish" theorist.[52] It is unfortunate for the history of economics that Smith did not see fit to publicize the penetrating economic analysis of Anderson.

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V

Adam Smith's peculiar habit of acknowledging predecessors as little as possible where issues of substantive theory were involved is all the more extraordinary in view of Smith's jealousy about his own priorities. In 1755 he publicly asserted authorship of the system of natural liberty "in order to prevent the possibility of some rival claims which he thought he had reason to apprehend."[53] Subsequently he leveled charges of plagiarism against Adam Ferguson in 1767 and William Robertson in 1769. Such accusations led to a breach with Ferguson, probably around 1780, and their differences were not patched up till Smith lay close to death. The accusation leveled at Ferguson is especially curious because it can be shown that Smith's treatment of the division of labor, the bone of contention between the two men, was substantially adopted from the French *Encyclopédie!* Ferguson's reply that he had only dipped into the same French source as Smith should have settled the controversy. On a further point, it may be pointed out that Smith does not even refer to Ferguson's elaborate analysis of the alienation of the worker under the division of labor. The analysis in Smith's own *Lectures* is quite brief and scarcely touches on the broader sociological implications deduced by Ferguson.[54] That Adam Smith's character possessed many virtues is undoubted, but a capacity to be clearheaded about intellectual priorities does not appear to be among them.[55]

In the only recent discussion of this feature of Smith's literary style, Clyde Dankert[56] notes the paucity of references in the *Wealth of Nations* and relates the incident of Smith having told James Boswell that "he was convinced that a Book should be complete and without references to other Books." It is possible that Smith meant that the argument of a book should be self-contained, which is certainly an excellent ideal in a volume meant for general instruction. In the context in which it is quoted, however, it appears to refer to the customary practice of acknowledging one's intellectual predecessors; if so, Smith's words are certainly extraordinary. What remains to distinguish a plagiarist from an honest pedagogue? Scholars hinder our historical understanding by failing to turn a cynical eye on the author who informed us that the desire to improve our situation comes with us from the womb and does not leave us till we get to the grave. Intellectuals seek immortality as purveyors of important original ideas. Why should Adam Smith be exempt from such feelings? And, if he did possess them, why do scholars feel uneasy about publicizing this issue?

NOTES

A very useful collection of articles on Adam Smith is to be found in J. C. Wood, ed., *Adam Smith: Critical Assessments* (London: Croom Helm, 1984), 4 vols. When I have had reason to refer briefly to a particular article contained in this collection, hereafter indicated as ASCA, I have simply indicated the article by its place in ASCA.

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1. Richard Whately, *Introductory Lectures* (London, 1831), 3. J. S. Mill, *Principles of Political Economy* (London, 1872), Preface. J. R. McCulloch, *The Literature of Political Economy* (London, 1845), 13. Adam Smith, *The Wealth of Nations* (New York, 1937), E. Cannan, ed. Editors Introduction, li.

   I am only interested in possible borrowings and ignore the question of the correctness of doctrines. Since this paper was written, T. W. Hutchison has written a masterly account of Smith's background in *Before Adam Smith* (London: Blackwell, 1988). Despite Hutchison's expressed intent of upholding Smith's stature, readers cannot fail to observe how little remains to credit Smith within Hutchison's account. Curiously, Smith himself is often used as the main source for the views of his predecessors—with predictably unfortunate results. See S. Rashid, "Adam Smith's version of the History of Economics and its Influence in the 18th and 19th Centuries," *Quarterly Review of Economics and Business* 27 (Autumn 1987): 56–69.
2. John Gillies (Scottish historian), in his translation of Aristotle's *Ethics and Politics*, as described by Dugald Stewart in "An Account of the Life and Writings of Adam Smith, LL.D." in *The Collected Works of Dugald Stewart*, vol. 10 (Edinburgh, 1872), 82–84.

   If Stewart's claim that discoveries arise by "easy and natural steps" be seriously applied to the *Wealth of Nations* it would remove much of the need for a paper such as this. Unfortunately, this is precisely where Smithian scholarship has been noticeably lax.
3. Jacob Viner, "Adam Smith and Laissez-Faire" in J. M. Clark et. al, *Adam Smith 1776-1926* (Chicago, 1928), 118. D. Vickers, "Adam Smith and the Status of the Theory of Money." S. G. Checkland, "Adam Smith and the Bankers." Both are in *Essays on Adam Smith* ed. A. S. Skinner and T. Wilson (Oxford, 1975). The failure to understand that Smith's microeconomics is no improvement upon the "folk" microeconomics that was common knowledge by 1760 is the most persistent failing in the existing literature. I deal with this point in some detail in "Smith, Steuart and Mercantilism: Comment," *Southern Economic Journal* (January 1986). J. Schumpeter, *History of Economic Analysis* (New York, 1954), W. D. Grampp, "The Liberal Elements in English Mercantilism," *Quarterly Journal of Economics* (November 1952): 465–501. E. Heckscher, "Mercantilism," *Economic History Review* (1936–37), reprinted in D. C. Coleman, ed., *Revisions in Mercantilism* (London: Methuen 1969), 19–34.

   I. M. D. Little, "History of Economic Analysis [Review of Schumpeter]," *Economic History Review* 8 (1954), 91–98.
4. Smith, *Wealth*, 24–25.
5. A. C. Dow, "The Hauteur of Adam Smith: An Unpublished Letter from James Anderson of Monkshill," *Scottish Journal of Political Economy* 31, 3 (November 1984): 284–85.
6. Smith, *Wealth*, 7.
7. Smith, op. cit., 8. V. Foley "The Division of Labor in Plato and Smith," *History of Political Economy* 6 (Summer 1974): 220–42, as well as "Smith and the Greeks: A Reply to Professor McNulty's Comments," *History of Political Economy* 7 (Fall 1975): 379–89. See also V. Foley, *The Social Physics of Adam Smith* (Purdue University Press, 1976).
8. Cannan, op. cit., xlix. G. Stigler, "The Success and Failures of Professor Smith" in ASCA no. 112, 457.
9. "An Account of the Life and Writings of Adam Smith, LL.D." in *The Collected Works of Dugald Stewart* vol. 10 (Edinburgh, 1872), 67–68. There is considerable mystery surrounding this occasion. "Considering that about forty years had elapsed between the time at which Stewart wrote the *Memoir*, one fails to understand why he handles the episode as if he were in deadly fear of saying anything of real importance about it." W. R. Scott, "New Light on Adam Smith," *Economic Journal* (1936), in ASCA, no. 5,56. J. M. Keynes considers the passage carefully and suggests that it was prompted not so much by someone having borrowed from Smith as by the accusation that it was Smith who had borrowed. However, Keynes clearly indicates that there is a mystery about the incident. "Adam Smith as Student and Professor," *Economic History* (1938), in ASCA, no. 8, 81–82.

   Smith's move between different philosophical approaches may have political implications. S.

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Rashid, "Political Free Trade? The *Lectures on Jurisprudence* and the *Wealth of Nations,*" BEBR Working Paper No. 1537, University of Illinois.

10. Keynes, op. cit., 82. The argument of the Lectures argues *against* trade restrictions because they raise prices. Smith does not really provide any effective arguments *for* free trade except by attacking its negation. Book IV of the *Wealth of Nations,* on the other hand, contains a powerful, direct defense of Free International Trade. Among the many authors who consider Smith to have provided arguments for Free Trade by 1755, see G. F. Shirras, "Adam Smith as Student and Professor," *Indian Journal of Economics* (1938), in ASCA, no. 9, 90–91.
11. Quoted by Dugald Stewart in his Biographical Sketch of William Robertson, op. cit., 204. There is no reliable evidence for the earlier view that Smith converted Glasgow merchants to Free Traders. J. F. Bell, "Adam Smith, Clubman," *Scottish Journal of Political Economy* (1960), no. 10 in ASCA, 95. An amusing error of transcription leads Bell to refer to Smith's question as dealing with the "naturalization of Foreign Protestantism" rather than the naturalization of Foreign Protestants."
12. *A Discourse of the Commonweal . . .* ed. Mary Dewar (Charlottesville: Virginia, 1969), 76.
13. Scholars have probably been misled by looking only in Hutcheson's works for sources of Smith's thought. A careful comparison will show that Smith does not give Hutcheson's arguments on the benefits of money. Readers interested in the prehistory of this formulation should note that the *Discourse* appears to expand on Oresme, who in turn seems to elaborate upon Aristotle. *Early Economic Thought,* ed. A. E. Monroe (Cambridge: Harvard University Press, 1945), 17 and 85.
14. At least since the time of Edwin Cannan, close textual resemblance has been recognized as evidence of borrowing. It should be obvious that this is a "second-best" device.
15. Smith, *Wealth,* 490, 500.
16. *Reflections . . .* (London 1766), 1.
17. Ibid, 40–41.
18. *Critical Review* (1766), 461–62. The *Critical* does not reveal the identity of the author but hints that it can be readily ascertained.
19. Smith, *Wealth,* 418.

    E. Heckscher, *Mercantilism* (London, 1965), vol. II, 367. Recent evidence presented by C. Mcleod clearly points to Henry Martin as the author. "Henry Martin and the authorship of the 'Considerations upon the East India Trade,'" *Bulletin of the Institute of Historical Research* LVI, 134 (November 1983): 222–229.
20. J. R. McCulloch, *The Literature of Political Economy* (London: Longmans, 1845), 100. W. A. Shaw, ed., *Bibliography of the Collection of Books and Tracts on Commerce, Currency, and Poor Law (1557 to 1763) formed by Joseph Massie* (London: Harding, 1937).
21. M. L. Myers, *The Soul of Modern Economic Man* (Chicago, 1983).
22. Sir Mathew Decker, *Essay on the Causes of the Decline of the Foreign Trade* (London, 2nd ed. 1750).
23. Ed. J. M. Lothian (London, 1963), 97.
24. I have partially dealt with Hume in "David Hume and Eighteenth Century Monetary Thought: A Critical Comment on Recent Views," *Hume Studies* (November 1984): 156–164.
25. W. L. Taylor, *Francis Hutcheson and David Hume as Predecessors of Adam Smith* (Durham, 1965) 14. Another admirer of Smith has the following words to say about Hutcheson's influence: "Had Hutcheson chosen to compile and to write rather than to lecture and to teach, the material obtainable from his notes would have left little ground for originality on the part of Smith," *The Return of Adam Smith* (Idaho, 1949), 5, by George S. Montgomery. Mr. A. Malter has pointed out to me that in William Leechman's preface to Hutcheson's posthumously published *System of Moral Philosophy* (1755) there is a reference to the "unseen hand" of Providence. The resemblance to Smith's "Invisible hand" is notable.
26. Quoted by Taylor, ibid., 66.
27. Quoted by Taylor, ibid., 105.
28. John Rae, *Life of Adam Smith* (London, 1895), 411.
29. Ibid., 253–54.
30. *The Wealth of Nations* ed. by R. M. Campbell and A. S. Skinner (Oxford, 1976), 10.

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31. *Principles of Political Economy*, ed. A. S. Skinner, (London 1966), I, 177. The prevailing tendency to consider the Scottish enlightenment as a homogeneous affair is perhaps responsible for the neglect of Smith's contemporaries. For an excellent account of the period see R. B. Sher, *Church and University in the Scottish Enlightenment* (Princeton: Princeton University Press, 1985).
32. *Characteristics* . . . (London, 1758, 95.

    The references provided by Sher, op. cit., to sermons of Adam Ferguson and Hugh Blair (pp. 42, 43) show that it was common to argue that men were acting to fulfill goals which were no part of their original intention.
33. Wallace, ibid., 119–20.
34. Ibid., 136.
35. R. Wallace, *A View of the Internal Policy of Great Britain* (London, 1764), pp. 2, 7, 99, 273.
36. *The Querist* in *The Collected Works of George Berkeley*, ed. A. A. Luce and T. E. Jessop (London, 1953), 105.
37. Ibid., 128.
38. The failure of scholars to emphasize the niggardliness of Smith's scholarship leads to some amusing errors. Edwin Cannan believed Berkeley to be the first to have claimed that economic policy should aim at the welfare of the common man. So obliquely is Cannan's view presented, that in the Guide to the Pergammon Press microfiche, *Adam Smith References Collection*, it is bluntly stated "Adam Smith refers to [Berkeley's] . . . queries in his WEALTH OF NATIONS." Would that this were true!
39. J. Bonar, *The Tables Turned* (London, 1926), 38.
40. As quoted by W. E. Clark, *Josiah Tucker Economist* (New York, 1901), 146.
41. P. Lambert, "The Law of Markets prior to J. B.: Say the Say-Malthus Debate," translated from the *Revue d'Economie Politique* (1942) in *International Economic Papers* I (1952).
42. Tucker's treatment of machinery has frequently been quoted by economic historians.
43. *The Elements of Commerce* . . . (privately printed 1756), reprinted in R. L. Schuyler ed., *Josiah Tucker* (New York, 1931), 59.
44. Ibid., 59.
45. Ibid., 58. There is some resemblance with Hume's views in *A Treatise of Human Nature* (Oxford: Clarendon Press, 1896), 492.
46. The best account of Adam Smith's treatment of the institutional framework is to be found in N. Rosenberg "Some Institutional Aspects of the Wealth of Nations," *Journal of Political Economy* (December 1960): 557–570. A careful reading of this fine article will, nonetheless, show that the treatment of institutions is not explicitly considered by Smith. This view of the relative merits of Smith and Tucker on the role of institutions is also espoused by F. A. Hayek, *Studies in Philosophy, Politics and Economics* (New York, 1967), 100.
47. *A Letter from Governor Pownall to Adam Smith L.L.D.F.R.S.* (London, 1776). Reprinted in *Correspondence of Adam Smith* ed. E. C. Mossner and I. S. Ross (Oxford, 1976).
48. *Letter*, 359.
49. W. R. Scott, *Adam Smith as Student and Professor* (Glasgow, 1937), 282. The Danish translator nonetheless appended a translation of Pownall's *Letter* to his translation of the *Wealth of Nations*.
50. J. Anderson, *Enquiry into the Nature of the Corn-Laws* (Edinburgh, 1777).
51. Scott, op. cit., 282.
52. *A Calm Investigation into the Circumstances* . . . (London, 1801), 15–17.
53. See note 6 above. It is possible that Smith's public assertions were provoked by either the prevalence of social analysis using Leechman's (or Hutcheson's) "unseen hand" (note 25) or the dissemination of Viscount Townshend's *laissez-faire* views. See S. Rashid, "Lord Townshend, Moral Philosophy and *Laissez-Faire*," *Journal of Libertarian Studies* VIII (Winter, 1986): 69–74.
54. This issue is covered in careful detail by R. Hamowy, "Adam Smith, Adam Ferguson and the Division of Labor," *Economica* 35 (August, 1968): 249–259.
55. My inability to read French and unwillingness to trust translations to adequately convey nuances has led to the omission of Smith's relation to the Physiocrats. This intriguing question has been raised several times in the past and considered insoluble in any definite way. The fact that Smith did *not* use an axiomatic framework for Free Trade in lectures before 1765 is suggestive of the

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notion that the Physiocrats did influence Adam Smith substantially. Certainly Dugald Stewart thought so in the lectures on political economy he delivered in Edinburgh. I deal with Stewart's views at greater length in a "Political Economy as Moral Philosophy," *Australian Economic Papers* (June, 1987).

56. *Adam Smith: Man of Letters and Economist* (New York, 1974), 81.

The failure of Smith scholars to apply an even-handed approach is discussed in S. Rashid, "Does a Famous Economist Deserve Special Standards?" *Bulletin of the History of Economics Society* (Fall 1989).

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Customary Law with Private Means of Resolving Disputes and Dispensing Justice: A Description of a Modern System of Law and Order without State Coercion

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It is not actually possible to describe what a system of privately produced law and order would be like in modern society because one cannot describe what does not exist, and, more fundamentally, guesses based on historic privatized systems (and there have been many; some are referred to below) or current trends in privatization may miss the mark substantially. The sophisticated crime protection and prevention equipment and the level of training and skill possessed by many crime prevention specialists today may be archaic compared to what would emerge as a result of the incentives created by full privatization. At the turn of the century, who but the wildest, most fantastic science fiction writers could have predicted the revolution in communications and computer technology we are seeing today, for instance? Some will consider the arguments that follow to fit in the category of science fiction too, but an attempt will nonetheless be made to describe how a modern society *might* function under a system of customarily produced and privately enforced and adjudicated laws. Some of the following predictions are made with considerable confidence after an extensive study of the scholarly literature on historical customary law systems, modern arbitration and mediation processes, and other related issues, but others are no more than educated guesses.

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It should be added that mine is not the first effort to visualize such a system, so the following discussion draws heavily from work by people like Barnett, Friedman, Rothbard, Tucker, Smith, Sneed, Becker, and Stigler, among others.

Customary Law: The Unwritten Social Contract

James Buchanan posed the following question: If government is dismantled, "how do rights re-emerge and come to command respect? How do 'laws' emerge that carry with them general respect for their 'legitimacy'?"[1] He contended that collective action would be necessary to devise a "social contract" or "constitution" designed to define the rights of the people in the first place and to establish a limited government to enforce them.[2] However, customary laws emerge spontaneously as a consequence of cooperation induced by reciprocities.[3] Reciprocity, in fact, provides the basis for recognition of duty or oblilgation under customary law.[4] Cooperation does not require collective (governmental) action. Furthermore, the rules of obligation recognized under all the customary law systems that have existed have always focused on individual rights, including the right to private property. That has been the basis for customary laws from primitive societies[5] through the Middle Ages,[6] and for all the remnants of such law that exist today. As Tucker pointed out, in a free society without government imposition or enforcement of laws, "man's only duty is to respect others' rights . . . [and] man's only right over others is to enforce that duty."[7] The many reasons to expect private property rights to be recognized as the dominant rules of obligation in a customary law system will become apparent in the following discussion. Such law requires neither a written constitution nor legislative authority. Indeed, as Hayek suggested, "Individual freedom, wherever it has existed, has been largely the product of a prevailing respect for such principles which, however, have never been fully articulated in constitutional documents. Freedom has been preserved for prolonged periods because such principles, vaguely and dimly perceived, have governed public opinion."[8]

Lon Fuller maintained that customary law is appropriately viewed as

> a branch of constitutional law, largely and properly developed outside the framework of our written constitutions. It is constitutional law in that it involves the allocation among various institutions . . . of legal power, that is, the authority to enact rules and to reach decisions that will be regarded as properly binding on those affected by them.[9]

Indeed, a privatized system of customary law based on reciprocity is not only possible, but has strong historical precedents.[10] The fact is that through much of history custom has been much more important in determining rules of conduct than written constitutions, legislation, or precedent.

Even members of primitive groups face strong incentives to develop a system of norms that, given enforcement, protects the rights and property of individual

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members of the group.[11] Cooperative establishment of rules of conduct based on individual freedom and private property creates significant reciprocal benefits. The incentives for such development and the process itself are not much different from those of other institutions that promote effective and efficient cooperation within the system.[12] A spontaneous law-making process can be viewed as similar to the spontaneous development of language. Indeed, Fuller described customary law as a "language of interaction."[13] No government was ever instrumental in the development of a language. Languages in both spoken and written forms develop over time through the spontaneous interactions of many independent individuals—individuals with strong incentives to develop a common language that facilitates interaction and cooperation. In fact, many other arrangements develop spontaneously for the same reasons—trading systems and markets, religious systems and congregations, extended family systems, clans, villages, cities, transportation routes *and* customary law. Customary law based on widely held norms and equity emerges, as Berman wrote, "on the ground"; it is "less programmatic" than legislative law imposed from above.[14] Actually, many of the laws in modern societies that are widely respected and adhered to (that is, violated *relatively* infrequently) are laws that developed from the "ground" because legislation is often codification of customary law.[15]

Characteristics of Customary Law

Offenses in a stateless legal system would be treated as torts. Many "crimes" would still be illegal, of course, particularly if they have victims. Nonetheless, certain types of activities that are currently defined as criminal would probably be allowed. Activities currently carried out in black markets (gambling, prostitution, the use and sale of marijuana and most other drugs) would probably be legal, for instance, since these actions generally do not have identifiable victims, and few people are likely to be willing to pay for their enforcement.

Of course, it is possible that a group may *voluntarily* cooperate (as opposed to being coerced into cooperating) to enforce a law where no identifiable victim exists if virtually everyone in the relevant group believes that the law should be enforced. But in a stateless system of law *and* enforcement, the allocation of enforcement resources would be determined by individual willingness to pay rather than by political strength or bureaucratic discretion over common pool resources.[16] "People who want to control other people's lives are rarely eager to pay for the privilege. They usually expect to be paid for the service they provide for their victims."[17] A private system of law would clearly be strongly biased toward individual freedom when individual action does no harm to another's physical person or property.

The possibility of a community having its own law, differing substantially from other communities, does not mean that an irrational patchwork of entirely dif-

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ferent law systems will exist. History demonstrates that standardization of many aspects of customary law over very large geographic areas would arise.[18] There certainly may be relatively minor differences, but perhaps even less differentiation would occur than exists from state to state and even city to city under the political system of law we currently have. Consider the privately developed English language, for example. The basic rules of English are such that people from Maine can communicate with people from Alabama, New York, Minnesota, Texas, Nebraska, and from the regions of Great Britain, Canada, Australia, New Zealand, and South Africa. Tremendous levels of standardization dominate all the regional differences in language, *and* in customary law.[19]

Punishment for Law Breakers

A significant advantage of a "victim oriented" system of law is ". . . that specifying the victim has the practical function of giving someone an incentive to pursue the case."[20] This incentive arises because of the nature of the "punishment" that would exist. The goal of the private enforcement system, given a violation of the law, would be restitution for the victim, and thus punishment would typically take the form of a fine (payable to the victim) of at least sufficient magnitude to compensate the victim for all losses and cover the full cost of bringing the offender to justice. This prediction finds strong support in the historical evidence. All systems of privately enforced customary law have been restitution oriented in this fashion, with fines as the major form of punishment.[21]

Fines are very efficient compared to modern methods of punishment such as imprisonment, which use up resources like guards and other personnel, the capital and resources needed to build the prisons, *and* the prisoners' time.[22] Fines consume far fewer resources. Some offenders may require close supervision in prison-like work places to ensure payment, as noted below, but the prisoner's own time is not wasted in that he is working to produce goods and services that can be sold in order to pay off the debt.

Appropriately set fines can also provide a significant deterrent. Suppose fines are set equal to the full cost to the victim plus the full cost of bringing the offender to justice, all divided by the probability that the offender will be brought to justice, as suggested by Becker and Stigler.[23] Consider for example the fine for stealing a car. If half the car thefts are solved, costs borne by the victim and incurred in law enforcement would be divided by one half or, in effect, multiplied by two. The fine would be double the damages. The benefit to the offender of stealing the car is the value of the car. Obviously, the expected cost of the crime is greater than the expected benefit if the courts set the same probabilities that the offenders perceive. Offenders, of course, may and probably do have a different perception of risk than victims, and perhaps judges, but the actual fine would still be quite large relative to the gain for the robber since the probability would clearly be

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less than one. Private courts may not determine fines in precisely the manner discussed here,[24] but private citizens who contract with courts and enforcers would be attracted to those firms that are effective at preventing (deterring) offenses—that is, to enforcers who make significant efforts to recover for the victim and judges whose fines are clearly high enough to compensate the victim and the enforcer. (Naturally a judge will be concerned about recovering his own costs as well since the loser will pay the court costs under this sort of system.)

The fine and victim restitution emphasis of privately enforced law provides another reason to suspect that few laws against victimless crimes would arise, and even if they did, few resources would be devoted to their enforcement. It is certainly possible that fines could be dictated by some tightly knit community. Incentives could be created to enforce such laws as well, if, for instance, a right to the collected fine is given to a successful enforcer. Again, laws against drugs, prostitution, gambling, and so on, *could* arise under a system of customary law—they are simply not nearly as likely to arise as laws against the violation of another individual's rights.

Activities that clearly would be finable, and therefore deterred, are offenses by private law enforcers against innocent citizens. Since falsifying violations, falsely charging innocent people of wrongdoing, and bullying citizens violate the rights of those who are innocent, a private, victim-oriented system of law would require full compensation from enforcers for anyone acquitted of a charge or mistreated. This implies that the loser in a court case would pay the full cost of the court appearance.

Fines as a primary form of punishment would also create incentives for those guilty of committing an offense to avoid unnecessary uses of court time, since fines levied by the courts would include court costs. Thus unsuccessful efforts by a guilty party to hide his guilt or drag out a trial would result in higher fines. This would encourage out-of-court settlements between offender and victim. Of course, this out-of-court settlement would not be like the plea bargaining of today's system. Victims would receive satisfactory restitution under private out-of-court settlements because the bargain would be between the victim and offender, not between the offender and a *public* prosecutor. The offender simply would avoid the higher payment to cover court costs in this case, while modern plea bargaining typically "forgives" a criminal for a certain portion of crimes committed in exchange for willingly admitting to and accepting punishment for the rest. Thus some victims do not even receive the satisfaction of knowing that the criminal has been punished, much less any restitution. Differential fines for those who admit guilt and those who try to hide it may even become a formal part of the customary law system. Such was the case in medieval Iceland's system of privately produced and enforced law, for instance, where ". . . the difference between two sorts of offenses provided a high 'differential punishment' for the 'offense' of concealing one's crime, an offense which imposed serious costs. . . ."[25]

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The preceding discussion suggests advantages to fines as the primary form of punishment for the offender as well. Imprisonment not only fails to compensate the victim, but typically requires the victim to bear more costs (e.g., the cost of cooperating in prosecution). Under these circumstances, "it is not surprising, therefore, that the anger and fear felt toward ex-convicts who in fact have not paid their debt to society have resulted in additional punishments, including legal restrictions on their political and economic opportunities and informal restrictions on their social acceptance."[26] But because fines for restitution would "restore" the victim, incentives for further revenge are significantly reduced.

Fines would be the primary type of punishment in a system of privately enforced customary law, but they might not be the only type of punishment. Pre-thirteenth century Icelandic[27] and primitive Kapauku[28] systems of law considered capital punishment appropriate for some crimes, for instance. Whether such punishment would arise in the customary law system of a modern society is difficult to predict. It is possible that the life of a perpetrator of a capital offense would be committed to working where the payments for such labor go to the victim or the victim's family, even though full restitution could never be achieved.

One individual property right that the law would recognize, as explained above, is the right to restitution when one's rights are violated. As with any private property right, the right to restitution would be transferable, which has been the case in virtually all the systems of privately produced law that have existed.[29] A marketable claim by a victim implies that it can be sold to someone willing to pursue and prosecute the alleged offender.[30] This, in turn, could produce arrangements under which violators of the rights of the poor and the weak would be pursued and prosecuted. Private enforcement arrangements can be anticipated that would serve the poor, the wealthy, and those in between.

Private Law Enforcement Mechanisms

A wide variety of individual and cooperative arrangements can be anticipated that would emphasize the protection of persons and property (prevention) and the recovery of losses suffered by victims. Individuals may choose to protect themselves and their property by owning guns, installing burglar alarms, building fences, barring windows, and so on, much as they do today. The rights to do such things are private property rights that clearly would be supported by privately enforced customary law.

Cooperative arrangements by groups would also arise. The benefits to be shared by watching and patrolling geographic areas are considerable, and thus incentives are strong to support such efforts. In some communities or neighborhoods where individuals budget constraints are more binding than time constraints, residents would contribute their time to a voluntary patrol. In others, where budget constraints are less binding, people would contribute money to hire a private

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security firm or firms, which in turn would furnish patrols, watchmen, guards, electronic watching devices or whatever the community wished to pay for.

Although there may be free-rider incentives inherent in such localized watching,[31] over time contractual arrangements would probably arise to internalize the deterrent benefits of patrol systems, thus eliminating the free-rider problem. This development might not actually take long in a highly mobile society like ours. Enterprising residential and business real estate developers would quickly see the benefit of establishing developments that offer, as part of the purchase price of a home or business location, a guarantee that everyone in the development has signed a legally binding contract to contribute to the community's security arrangements. Such communities already exist, of course. In some areas a person who buys property has to agree to pay a fee that covers the cost of the private guard and patrols (as well as street maintenance, street lighting, etc., if the entire community is privatized). As people move, for whatever reason, these sorts of contractual arrangements would attract increasing numbers, since such communities would be relatively safe from violations of individual property rights. This is particularly true since those least likely to free ride because of their strong concern for protection would find such contractual arrangements quite attractive, leaving relatively large numbers of free riders in other, non-contracting neighborhoods.

Voluntary arrangements without legally binding contracts (that is, those that allow free riding) would become relatively less effective, and neighborhoods so characterized would face relatively greater threats to persons and property. As the threat increased more people would move out, or the cost of free riding would increase to a level such that more and more of those who remain would be willing to contract for joint purchase or production of protection. Free riders would face the increasing ire of their neighbors, ultimately backed by ostracism, and be prevented from consuming any benefits of living in the area that they can be excluded from. Communities that fail to internalize the benefits of group protection because of free riders would find themselves at a competitive disadvantage with those that eliminate free riding. Property values would fall. The cost of free riding would rise tremendously under privatization. None of this means that *all* free riding must be eliminated as *every* individual (or even every community) contracts to internalize the deterrent benefits of protection, of course. Communities may conceivably exist and survive without developing such security systems, although their "citizens" would probably have either very high levels of self-protection or have little they feel is worth protecting. (There clearly are people who have opted out of the current legal and social system roaming the streets of most major cities and many of the nation's wildernesses).

Individual security firms may simply offer protection services like patrols and guards, but they may also be vertically organized to offer recovery of losses (or restitution) as well. Some advocates of private law enforcement have theorized

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that the private security market would be organized much like a mutual insurance market. A firm or a cooperative surety (or pledge) group organization would insure individuals and their property against violations.[32] This firm or organization would therefore have strong incentives to prevent offenses by supplying police services with an emphasis on patrolling, watching, and other deterrents. If an offense occurs against a subscriber to these services, the insurance would pay the subscriber's claim unless they recover all losses. In paying the subscriber, the firm or organization, in effect, would purchase the right to collect at least some portion of the fine from the offender. Strong incentives would therefore exist to pursue the offender and to gather evidence for court prosecution.[33]

Of course, such insurance arrangements with vertically organized firms providing both protection and investigative services may not arise in every (or even any) case. Individuals may buy protection from one company, and in the event of an offense, contract with another to pursue the offender or offer a reward to attract the attention of a number of specialized thief-taking firms. Market forces of demand (reflecting the preferences of consumers) and supply (reflecting production technologies and costs) would dictate the actual industrial organization that evolves.

Numerous other contractual arrangements can be anticipated under a system of private enforcement of law. For one thing, the contract with a particular protection firm may include an arbitration clause so that disputes between clients of that firm would be settled internally. The company may provide an arbitrator or arbitrators or contract with a particular dispute resolution firm. (The market for adjudication is examined in more detail below, following further consideration of enforcement.) An arbitration clause in a legal contract also would mean that refusal to submit to arbitration is unlikely since it would probably result in ostracism by the rest of the members of the community, loss of protection services, and perhaps of ownership rights to property purchased under the contract (e.g., a residence or business location).

Similar contractual arrangements would probably arise *between* different communities and their (perhaps different) protection agencies. And even if a formal contract did not exist, the desire to avoid violence would lead to submission to arbitration in most instances. Such arrangements might be likened to formal or informal extradition treaties among political entities. Consider first an offense (or alleged offense) by a member of one group against a member of a different law enforcement organization (firms, communities, etc.) where both law systems hold the act to be illegal. The organization whose member is alleged to be the offender would have strong incentives to allow their member to be arrested and to apply considerable pressure on that individual to submit to arbitration. Sneed noted that a protection organization (or firm) that refused to allow the arrest of a member (or client), given good cause, would suffer in several ways: (1) other organizations would similarly resist attempts to arrest *their* clients, and thus the

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organization's ability to protect its members would be reduced and the chances of violent confrontations would rise; either violent confrontations or reciprocal impotence would cause loss of membership (or clients); (2) reciprocal working relationships for the pursuit and capture of geographically mobile offenders (cooperative information and apprehension networks, or an inter-group bounty system) would be very valuable, and without doubt, they would develop, but refusal to cooperate in other areas would jeopardize the chance to participate in such arrangements; and (3) an organization that refused to turn over members who committed offenses would tend to attract members who intended to commit offenses, thus placing the organization in jeopardy because of ever-increasing confrontations.[34] These incentives apply whether the member to be arrested is guilty or innocent.[35] Thus every policing organization would probably explicitly state that disputes between members of different organizations must be decided by impartial private courts or arbitrators.

That arrangements such as those envisioned by the Sneed argument, whether formal or informal, would arise is supported by historical evidence. For example, the extended families of the primitive Ifugao applied pressure to their members to yield to mediation procedures when a dispute arose with a member of another family.[36] Formal procedures existed for resolution of disputes between members of different congregations in medieval Iceland[37] and various *tuatha* in Ireland prior to subjugation by the British.[38] Jurisdictional rules were well defined among the primitive Kapauku[39] and the Anglo-Saxons before the Norman conquest.[40] Medieval mercantile law was customary law enforced by the merchants themselves, and it was applied evenhandedly to foreign merchants and domestic merchants alike.[41]

Sneed also suggested that bail bonds might be posted by an accused offender's protection company or organization,[42] and this too has historical precedent. Under the surety system in medieval Ireland, a large fine levied against a member of a particular *tuath* might be paid by the group as a whole, and they in turn could collect from the offender.[43] Similarly, Icelandic society prior to the fourteenth century "provided their members with money to pay large fines."[44] The Anglo-Saxon tithing system that existed before the Normans imposed their will on England also included effective credit and bonding.[45] Such bonding or credit arrangements have some very significant advantages. First, the victim's enforcement organization would require a bail sufficient to compensate the victim or his heirs, and cover the organization's cost associated with the case. Consequently, the victim and his organization would be relatively unconcerned if the accused fails to appear. In fact, it would be the accused's own defense organization who would be responsible for collecting from him if he is guilty. Ostracism must play a predominant role in inducing someone (particularly someone who is guilty) to submit to arbitration. This bail bonding arrangement makes ostracism possible. If the members of an accused offender's own community or other mutual defense

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group have strong incentives to apply pressure on the accused to submit, then ostracism can be effective. Furthermore, in contracting with a particular organization or firm for the option of bail, should it be required in the future, the individual may voluntarily agree to submit to confinement or yield a portion of his future income to repay the bond, should he be found guilty. At any rate, the onus would be on the members of the accused's organization to collect if he is guilty, rather than on the victim.

A second desirable characteristic of the bail (or credit) arrangement as part of a contract with a particular protection firm or organization is that organizations would have incentives to work on behalf of the accused in an effort to recover the bond. (Recall also that those who are acquitted of a violation would have the right to restitution of costs, including the cost of any investigation on his behalf.) Thus someone accused of an offense would "regularly have investigative agencies working on his behalf which wield powers of the same order as those of the arresting company. Deliberate as well as accidental conviction of the innocent would be far less feasible. Falsification of evidence would be considerably more risky."[46]

The preceding discussion of reciprocal arrangements between different communities and different law enforcement organizations assumed that the violated law was common to both communities and their enforcement organizations, although, as observed earlier, some differences in law could arise across communities or groups. How might the private sector handle a member of one legal organization who, while traveling in some distant community, violates a law unique to that legal organization? Several possible arrangements can be conceived. For instance, a risk-averse individual who expects to be in situations where he may inadvertently violate an unknown law could insure himself against that possibility. Thus his protection company would pay his fine (or bail) and he would not suffer any exorbitant personal loss. Under this scenario, the relevant law is that of the group being violated rather than that of the violator.

A particular community's law could involve a fine that most people outside that group considered unreasonable, or the law itself may be commonly held to be unreasonable. However, if such a law is violated by someone from another community, both groups still would have strong incentives to avoid a violent confrontation. Imposition of laws on outsiders that are way out of line with those that exist in most communities clearly increases the chances of violence, and thus a negotiated or arbitrated settlement would, in most cases, lower the cost to the accused and his insurers below that which would induce violence. A community that insists on strictly imposing its own morality and heavy penalties on outsiders would initially face continual clashes, followed by boycott sanctions as residents of other communities refuse to travel to or trade with them, or to enter into reciprocal arrangements to yield accused violators of their laws. A community that isolates itself would not survive in a competitive, free-market environment.

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Those who weakly adhere to the norms the community wishes to impose would leave first, and as property values and trade-generated incomes declined, others would follow. In fact, then, if a community wishes to impose laws differing substantially from the norm, they would have strong incentives to inform outsiders of the differences in order to avoid conflict and minimize the difficulty of maintaining non-standard laws. Part of the reciprocal agreements with other communities and enforcers for extradition, etc., may be explicit recognition of differences in laws and procedures for treating conflicts that arise under the different laws.

Undoubtedly some individuals would not join any cooperative law enforcement arrangement and refuse to recognize any rules of law. After all, there are thousands of such people today. The incentives to cooperation and contract would be considerably stronger under a system of customary law and private enforcement than under public law and law enforcement (and, under a system dominated by private property, all those millions of acres of publicly owned land would not be available for such people to free ride on), but a relevant question remains: How would these people be treated under privatization? First, they would be left alone unless they violate someone else's rights. Second, they would have to defend their person and property on their own, given their refusal to cooperate. But what would happen if they violated a law by infringing on someone else's rights? No form of ostracism or boycott sanction would be effective in inducing them to submit to arbitration or to pay whatever fine is levied, should they be found guilty. Actually, the same question applies to anyone who refuses to submit to the pressures of ostracism and pay a fine (or perhaps, to go to arbitration).

The ultimate threat that underlies any system of property rights is that of violence. If someone refuses to yield to arbitration and/or accept the judgment of the courts, the system (*any system, including government*) moves to violence.[47] An individual who commits a major offense against someone else and then further refuses to yield to the legal justice system would be an outlaw. In primitive legal systems (as well as others that have not drawn their authority from a central state government), anyone was free to take an outlaw's life and property.[48] Such a contingency would probably arise in a modern system of privatized law and order as well.

Private Courts

It was suggested above that contractual arrangements for arbitration would probably arise within and between the groups and communities that organize for joint security. Furthermore, these various communities and agencies would have very strong incentives to seek out judges for both inter- and intra-community dispute resolutions who not only have reputations for impartiality, but for issuing clear, easily interpretable opinions available as a guide in settling future disputes—

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that is, precedents. Judges who provide such opinions would garner much more business (if not all the business) than judges who issue vague, uninterpretable, or secret opinions. Why? Simply because disputes are costly and always raise the specter of potential violence. Both would be avoided if at all possible by private sector law enforcers. Note that the concern for a security agency or community representing some victim would be much stronger in this regard than the concern of *individual* disputants in our current system, since these firms or communities represent many potential victims and offenders, and therefore many possible future confrontations.

There is a second reason, beyond minimizing the cost of future disputes, for demanding clear, well-founded decisions. Smith referred to it as the "verification aspect."[49] In order for a dispute to end satisfactorily, a decision has to be acceptable—verifiable—not just to the parties most directly affected, but to the groups or firms representing these parties *and* to groups who, although not directly involved, might be drawn into a confrontation with one of the groups in the dispute under consideration. The willingness of various other firms and organizations to enter into and honor reciprocal arrangements, such as extradition contracts, with those involved in the dispute would depend, in part, on the way this and other disputes are handled.

These contractual arrangements between dispersed organizations to encourage arbitration of disputes between their members also would increase the likelihood of standardization of certain aspects of law. In effect, law would develop through dispute resolution to facilitate the interaction *between* groups—law based on common custom as reflected in previous judgments. Aspects of a particular group's law that prove to be efficient would be revealed to another group in the process, and they could adopt it in turn, if they wished. Such a process characterized the standardization of the Law Merchant throughout Western Europe during the eleventh and twelfth centuries, for example.[50] Efficient rules adopted by one merchant community tended to spread to other communities quite rapidly.

Critics of private adjudication systems are sometimes fearful that two desirable institutional arrangements of modern public courts might disappear in a private system. First, would there be trial by jury? If jury trials are demanded they would be supplied, assuming that the demand is sufficiently strong to pay the full cost of such a trial. Of course, our current system rarely comes close to reimbursing jury members for their time and effort. Jury trials would be relatively more expensive than judge-only trials, and consequently, they are relatively less likely under privatization. This is not necessarily bad, however. As Person noted, jury trials ". . . are of great importance in the government courts as a means of protection from a hostile judge but of less importance when parties select their own judges."[51] Indeed, juries were developed by Norman kings for inquisitional purposes and were ultimately accepted as a desirable institution *because* they served as a counter force to another royal institution—the judges of the king's courts.[52]

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As a consequence, the demand for jury trials is likely to be considerably weaker in a privatized system, and when this is combined with their relatively high cost they become relatively unlikely.

The second institutional question that often arises is, would there be courts of appeal? Again the answer is, if they are demanded. There would not be a single monopolized "supreme court," of course, but there might be competitive appeals courts just as there would be competitive judges for the initial consideration of a dispute. Naturally, the next question is, given the existence of appeals courts but no supreme court of last resort, what will prevent a continuous, never-ending process of appeals so that an offender avoids submitting to a decision but is not declared an outlaw. The contractual arrangements for dispute settlement within a particular community or security organization would, in all likelihood, specify an appeals procedure and put a limit on the number of appeals (the medieval Law Merchant allowed no appeals, for instance, because the costs in terms of delay and disruptions of commerce were considered to be too high[53]). Since formal and informal contracts would arise between groups to establish procedures for intergroup dispute resolution, appeals procedures may be established for those disputes as well. Alternatively, as part of the agreement to submit to arbitration when prior arrangements do not exist, the parties may specify an appeals procedure and cutoff point.

Ostracism, Boycott Sanctions, Private Prisons, and the Collection of Fines

Why would someone pay a fine or pay off any debt if the coercive power of the state did not exist to force payment? The answer is basically the same as for the question of why someone, particularly someone guilty of an offense, would submit to arbitration in the first place—ostracism and boycott sanctions would convince many to pay their debts. The potential effectiveness of ostracism and boycott threats is enhanced under the contractual arrangements predicted above. If indeed part of the insurance arrangement is the provision of credit to pay bails or large fines, then the responsibility of collecting from the offender is shifted from the victim to the offender's own security organization. Ostracism by one's own community can be an extremely effective method of inducing payment of debt. Outlawry would be the most severe form of ostracism, but less severe threats would often be sufficient to induce compliance.

Although ostracism has been effective through history as a means of inducing compliance with private court judgments,[54] some might argue that it would not be effective in our modern mobile society. On the contrary, ostracism is likely to be even more effective today than it was in the historical situations alluded to here: "Nowadays, modern technology, computers, and credit ratings would make such . . . ostracism even more effective than it has ever been in the past."[55]

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This does not mean that some guilty offenders would not flee and attempt to hide, just as many criminals do under our governmental system of justice. It simply means that, given the communications technology now available, the network of cooperative, reciprocal contracts between various communities and their justice agencies would probably prevent such an individual from obtaining the benefits of joining some other community, or at least severely limit the likelihood of such an occurrence. The Anglo-Saxon tithing arrangement excluded anyone from entering or dealing within a community who could not demonstrate that he was a member in good standing of some surety group.[56] With modern communications technology, checking any stranger's claims of insurance would be much easier than it was then.

A more relevant concern is that offenders may be unable to meet their obligations. If an offender cannot be appropriately fined, would such a system break down? That was not the case historically. For example, Friedman, in his examination of medieval Icelandic justice, suggested that a variation on the Icelandic debt-thralldom would solve the problem of judgement-proof offenders. In particular, he proposed that "an arrangement which protects the convicted criminal against the most obvious abuses would be for the . . . criminal . . . [to] have the choice of . . . accepting bids for his services. The employer making such a bid would offer the criminal some specified working conditions (possibly inside a private prison, possibly not) and a specified rate at which the employer would pay off the fine. In order to get custody of the criminal, the employer would have to obtain his consent and post bond with the court for the amount of the fine."[57] The offender would face a choice between ostracism or voluntarily working off the fine. Contracts between the debtor and the victim, or more likely the debtor's insurers, would specify the work conditions. If the insurers perceive little risk that a debtor will renege, they might simply allow him to continue in his trade and make periodic payments. If the risk of reneging is perceived to be large, varying degrees of security and supervision may be provided for in the contract. For example, the debtor may agree to report to a supervisor once a week or once a month (e.g., as parolees report to parole officers) or to return to and remain in a secure facility each evening (e.g., as in work-release programs that are sometimes available today).

If the risk of reneging is large enough, however, a "penal specialist" would be employed. The protection agency-insurance company may have its own specialized penal subsidiary, of course, or separate firms may specialize in providing such services. Sneed predicted that a competitive penal system would arise wherein several firms would bid for employment of the convict under secure conditions.[58] Furthermore, the insurance company/convict would have the right to withdraw from the resulting contract if the prison firm did not live up to its agreement, a right that would guarantee that the convict would make the highest possible wage (e.g., be paid his marginal product) so he could earn his way out of

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prison as quickly as possible. Whether exactly these sorts of contractual arrangement arise or not, it is clear that the private penal system would differ from current public prisons.

One important difference between prisons under a fully privatized system and current government prisons is that those who run private penal firms would have strong incentives to treat prisoners well. Such incentives are enhanced by an arrangement that ensures prisoner mobility, as Sneed emphasized, but they exist even without a high degree of mobility. After all, a person's productivity, and therefore the rate of debt repayment, under such a system is likely to be significantly influenced by his treatment. Since the penal firm would either contract with the debtor to assume the risk of debt payment or contract with insurers (or perhaps victims) who want the debt paid off as quickly as possible, a firm that has a reputation for mistreating prisoners in such a way as to reduce their productivity would clearly not receive much business. Along these same lines, increased effort by a prisoner would reduce the period of confinement, so the length of the term would be at least partly self-determined. Prisoner morale would improve, making eventual rehabilitation easier.

There actually are a number of reasons for expecting that rehabilitation would be far more effective under such a system than it is with current efforts, beyond the more humane treatment of prisoners and their relatively better morale.[59] Productive use of inmate time would provide them with incentives to develop new or strengthen existing marketable skills, and teach them the discipline needed to hold a job in the market place after their release.[60]

Under the current system, prisoners are idle; they are bored. This idleness and boredom reflects a lack of constructive outlets, and therefore encourages other outlets. In particular, violence and drug abuse are both significant problems in modern prisons. Neither are as likely in a privatized system. Drugs may reduce productivity and delay release, for example, and the risk of injury from a violent confrontation that significantly delays release, would provide a substantial deterrent to violence.

In Sneed's words, "our analog to prison would not be, as today, a brutal institution primarily functioning to teach brutes how to be more brutish, but would become almost a treatment center, a place to learn how to live peaceably in outside society. Our present system only teaches a person how to live in prison."[61] This is an important consideration for those who question the effectiveness of ostracism and boycott sanctions as sufficient inducements for offenders to submit to arbitration judgments, which may imply working under the supervision of a private penitentiary until the debt is paid off. The "prison" experience under privatization would not be at all comparable to the situation a convict faces in our "modern," governmentally produced prisons. The incentives to avoid such "punishment" would, therefore, be considerably weaker than under the current system.

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Conclusions

The argument outlined above is that a system that emphasizes individual responsibility and liberty can be established under customary law with private sector institutions for enforcement and adjudication. Such a system may not be perfect—e.g., some free riding may occur.[62] Thus some may suggest that limited government involvement, where government does those few things that it might do better than markets, would be superior to complete privatization. Friedman answered this question in the following way:

> Perhaps it would be—if the government stayed that way. . . . One cannot simply build any imaginable characteristics into a government; governments have their own internal dynamic. And the internal dynamic of limited governments is something with which we, to our sorrow, have a good deal of practical experience . . . the logic of limited government is to grow. There are obvious reasons for that in the nature of government, and plenty of evidence. Constitutions provide, at the most, a modest and temporary restraint. As Murray Rothbard is supposed to have said, the idea of a limited government that stays limited is truly Utopian.[63]

Every aspect of government involvement in law and order started out to be *very* limited (or nonexistent). Royal courts in England, for example, initially had very limited jurisdictions.[64] Then they began competing with other courts in adjudicating increasingly more diverse laws. They had a "competitive" advantage in that part of the cost of using them was not born by litigants. Various interest groups were happy to shift their costs for protection services and the enforcement of their laws onto others by using government courts, and later government watchmen, police, prosecutors, and so on. Government entities were happy to oblige. The combination of power seeking and bureaucratic growth by government officials and transfer (or rent) seeking by interest groups inevitably turns limited government into big government.

NOTES

1. James M. Buchanan, "Before Public Choice," in Gordon Tullock, ed., *Explorations in the Theory of Anarchy*, (Blackburg, Va.: Center for the Study of Public Choice, 1972), 37.
2. Ibid., and see Buchanan, *Freedom in Constitutional Contract* (College Station, Tex.: Texas A&M University Press, 1972).
3. See, for example, Bruce L. Benson "The Spontaneous Evolution of Commercial Law," *Southern Economic Journal* 55 (January 1989): 644–661; Benson, "Enforcement of Private Property Rights in Primitive Societies: Law Without Government," *Journal of Libertarian Studies* 9 (Winter 1989): 1–26; Benson, *The Enterprise of Law: Justice Without the State* (San Francisco: Pacific Research Institute, forthcoming); or Lon L. Fuller, *The Morality of Law* (New Haven: Yale University Press, 1964).
4. Fuller, ibid., 23–24.
5. Benson, "Enforcement of Private Property Rights in Primitive Societies"; and Benson, "Legal Evolution in Primitive Societies," *Journal of Institutional and Theoretical Economics* 144 (December 1988): 772–788.

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6. David Friedman, "Private Creation and Enforcement of Law: A Historical Example," *Journal of Legal Studies* 8 (March 1979): 399–415; Joseph R. Peden, "Property Rights in Celtic Irish Law," *Journal of Libertarian Studies* 1 (1977): 82–94; and Benson, *The Enterprise of Law.*
7. Benjamin R. Tucker, *Instead of a Book* (New York: Benj. R. Tucker, Publisher, 1893), 59.
8. F. A. Hayek, *Law, Legislation and Liberty,* Vol. 1 (Chicago: University of Chicago Press, 1973), 55.
9. Fuller, *The Morality of Law,* 128–129.
10. Benson, "Enforcement of Private Property Rights in Primitive Societies"; Benson, "The Spontaneous Evolution of Commercial Law"; and Leon E. Trakman, *The Law Merchant: The Evolution of Commercial Law* (Littleton, Col.: Fred B. Rothman & Co., 1983).
11. Benson, "Enforcement of Private Property Rights in Primitive Societies."
12. See Hayek, *Law, Legislation and Liberty,* Vol. 1; Fuller, *The Morality of Law;* Fuller, *The Principles of Social Order,* Durham, N.C.: Duke University Press, 1981.
13. Fuller, *The Principles of Social Order,* p. 213.
14. Harold J. Berman, *Law and Revolution: The Formation of the Western Legal Tradition,* Cambridge, Mass.: Harvard University Press, 1983, p. 274.
15. Benson, "The Spontaneous Evolution of Commercial Law"; and Benson, *The Enterprise of Law.*
16. For discussions of various aspects of government law enforcement as common pool resources, see Benson, "Corruption in Law Enforcement: One Consequence of 'The Tragedy of the Commons' Arising With Public Allocation Processes," *International Review of Law and Economics* 8 (June 1988): 73–84; Benson, *The Enterprise of Law*; Benson and Wollan, Laurin A., Jr., "Prison Crowding and Judicial Incentives," *Madison Paper Series,* No. 3 (May 1989): 1–21; and Richard Neely, *Why Courts Don't Work* (New York: McGraw-Hill, 1982).
17. Friedman, *The Machinery of Freedom: Guide to a Radical Capitalism* (New York: Harper and Row, 1973), 173–174.
18. Benson, "The Spontaneous Evolution of Commercial Law"; and Benson, *The Enterprise of Law.*
19. Ibid.
20. Friedman, "Private Creation and Enforcement of Law: A Historical Case," 414; also see Randy E. Barnett, "Restitution: A New Paradigm of Criminal Justice," *Ethics* 87 (July 1977), 293.
21. For example, see Benson, "The Spontaneous Evolution of Commercial Law"; Benson, "Enforcement of Private Property Rights in Primitive Societies"; Friedman, "Private Creation and Enforcement of Law: A Historical Case"; and Peden, "Property Rights in Celtic Irish Law."
22. See for example, Friedman, "Private Creation and Enforcement of Law: A Historical Case," 408; and Barnett, "Restitution: A New Paradigm of Criminal Justice," 291.
23. See Gary Becker, "Crime and Punishment: An Economic Approach," *Journal of Political Economy* 76 (March/April 1968): 191–193; and George J. Stigler, "The Optimum Enforcement of Laws," *Journal of Political Economy* 78 (May/June 1970): 531.
24. For other possibilities see Barnett, "Restitutions: A New Paradigm of Criminal Justice," 288.
25. Friedman, "Private Creation and Enforcement of Law: A Historical Case," 409.
26. Becker, "Crime and Punishment: An Economic Approach," 194.
27. Friedman, "Private Creation and Enforcement of Law: A Historical Case."
28. Benson, "Enforcement of Private Property Rights In Primitive Societies."
29. Benson, *The Enterprise of Law;* and Friedman, "Private Creation and Enforcement of Law: A Historical Case."
30. Friedman, Ibid., 414.
31. In this regard, see Benson, *The Enterprise of Law,* where the potential for the free-rider problem is shown to be quite small *relative* to the externality problems associated with public sector law enforcement.
32. See, for instance, Friedman, *The Machinery of Freedom: Guide to a Radical Capitalism;* Murray Rothbard, *For a New Liberty* (New York: Macmillan, 1973), 222–228; and Clarence L. Swartz, *What is Mutualism?* (New York: Vanguard Press, 1927), 155–166.
33. Rothbard, Ibid., p. 222.
34. Sneed, J. "Order Without Law: Where Will Anarchists Keep the Madmen?" *Journal of Libertarian Studies* 1 (1977): 119.
35. Ibid.

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36. Benson, "The Lost Victim and Other Failures of the Public Law Experiment," *Harvard Journal of Law and Public Policy* 9 (Spring 1986): 399–427; and Benson, "Enforcement of Private Property Rights in Primitive Societies."
37. Friedman, "Private Creation and Enforcement of Law: A Historical Case."
38. Peden, "Property Rights in Celtic Irish Law."
39. Benson, "Enforcement of Private Property Rights in Primitive Societies."
40. Benson, *The Enterprise of Law.*
41. Benson, "The Spontaneous Evolution of Commercial Law"; and Trakman, *The Law Merchant: The Evolution of Commercial Law.*
42. Sneed, "Order Without Law: Where Will Anarchists Keep the Madmen?", 119.
43. Peden, "Property Rights in Celtic Irish Law."
44. Friedman, "Private Creation and Enforcement of Law: A Historical Case," 400.
45. Benson, *The Enterprise of Law.*
46. Sneed, "Order Without Law: Where Will Anarchists Keep the Madmen?", 120.
47. Benson, "Enforcement of Private Property Rights in Primitive Societies"; Benson, *The Enterprise of Law;* and John Umbeck. *A Theory of Property Rights With Applications to the California Gold Rush* (Ames: Iowa State University Press, 1981).
48. See for example, Benson, Ibid.; Peden, "Property Rights in Celtic Irish Law"; and Friedman, "Private Creation and Enforcement of Law: A Historical Case."
49. George Smith. "Justice Entrepreneurship in a Free Market," *Journal of Libertarian Studies* 3 (Winter 1979): 422–424.
50. Benson, "The Spontaneous Evolution of Commercial Law"; and Trakman, *The Law Merchant: The Evolution of Commercial Law.*
51. Carl Person. "Justice, Inc.," *Juris Doctor* (March 1978): 34.
52. Benson, *The Enterprise of Law.*
53. Benson, "The Spontaneous Evolution of Commercial Law"; and Trakman, *The Law Merchant: The Evolution of Commercial Law.*
54. See for example, Benson, Ibid.; Benson, "Enforcement of Private Property Rights in Primitive Societies"; Benson, *The Enterprise of Law;* Peden, "Property Rights in Celtic Irish Law"; and Friedman, "Private Creation and Enforcement of Law: A Historical Case."
55. Rothbard, *For a New Liberty,* 231.
56. Benson, *The Enterprise of Law.*
57. Friedman, "Private Creation and Enforcement of Law: A Historical Case," 415.
58. Sneed, "Order Without Law: Where Will the Anarchists Keep the Madmen?", 122–123.
59. See Barnett, "Restitution: A New Paradigm of Criminal Justice," 293, for discussion of physiological factors not discussed below.
60. In fact, Sneed logically suggested that since the penal firms will be producing marketable products they will probably offer offenders continued employment after they have retired their debts ("Order Without Law: Where Will Anarchists Keep the Madmen?" 123):

> It would be foolish to in effect fire a worker with experience simply because he has now regained his freedom. He will still remain employed by the penal agency but will become free of security restrictions and will be an ordinary worker. Indeed, an agency which does provide employment for "graduated" convicts would have a strong competitive edge in the recruitment process.

This potential clearly reduces the likelihood of a return to illegal activities by a released prisoner and adds to the superior rehabilitation under privatization, since many now return to crime out of virtual necessity—they have no marketable skills after release from prison and therefore they cannot support themselves in legal activities.

61. Ibid., 123.
62. Benson, *The Enterprise of Law.*
63. Friedman, *The Machinery of Freedom: Guide to a Radical Capitalism,* 200–201.
64. Benson, *The Enterprise of Law.*

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Concepts of the Role of Intellectuals in Social Change Toward Laissez Faire*

by Murray N. Rothbard

The creed of laissez faire—individual liberty, inviolate rights of property, free markets, and minimal government—is virtually bound to be a radical one. That is, this libertarian creed is necessarily set in profound conflict with existing forms of polity, which have generally been one or another variety of statism. In this paper, we concentrate, not on examining or justifying the laissez-faire doctrines of various thinkers, but, given those doctrines, how these writers and theorists proposed to try to bring about their ideal polity. In short, having adopted a profoundly radical creed at odds with the ruling dogmas of their day, what, if anything, did these theorists offer as a strategy for social change in the direction of liberty? We are familiar with how Marx and the Marxists met this challenge of how to proceed in the direction of a radical ideal. How did laissez-faire thinkers meet their own particular challenge, in some ways similar and in some ways quite different? In this paper, we do not presume to be comprehensive; we select several important laissez-faire intellectuals and groups of intellectuals, over the centuries, and see what solutions they could offer to the problem of libertarian social change.

To their credit, the Marxists have spent an enormous amount of their time and energy grappling with problems of strategy and tactics, much more so than have laissez-faire thinkers. On the other hand, the libertarians have not enjoyed the luxury of having a readily identifiable social class to ordain as the preferred agent of change (the "proletariat" for classical Marxists; the peasantry for Leninists-Maoists, and the lumpen proletariat and the "student class" for the short-lived New Left in the United States of the late 1960s.) Neither did the libertarians have the comfort of knowing that their triumph has been made inevitable by the "scien-

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tific laws of history,'' and by the irresistible if murky workings of the materialist dialectic.

All new, radical ideas and ideologies begin necessarily with one or a handful of lone intellectuals, and so through history such intellectuals, finding themselves in possession of a radical political creed, have realized that, if social change is ever to occur, the process must begin with themselves. Most classical liberal or laissez-faire activists have adopted, perhaps without much thoughtful consideration, a simple strategy that we may call ''educationism.'' Roughly: We have arrived at the truth, but most people are still deluded believers in error; therefore, we must educate these people—via lectures, discussions, books, pamphlets, newspapers, or whatever—until they become converted to the correct point of view. For a minority to become a majority, a process of persuasion and conversion must take place—in a word, education.

To be sure, there is nothing wrong with this strategy so far as it goes. All new truths or creeds, be they scientific, artistic, religious, or political, must proceed in roughly this way: the new truth rippling out from the initial discoverers to disciples and proteges, to writers and journalists, to intellectuals and the lay public.[1] By itself, however, pure educationism is a naive strategy because it avoids pondering some difficult problems, e.g., how are we to confront the problem of power? Do we have to convert a large majority, a narrow one, or merely a critical mass of an articulate and dedicated minority? And if we perform such a conversion, what will happen to the State? Will it wither away (or wither to an ultraminimal nugget) by itself, automatically, as it were? And are there one or more groups that we should concentrate on in our agitation? Should we invest our necessarily scarce resources on one more likely group of converts rather than another? Should we be consistent and overt in our agitation, or should we practice the arts of deception until we are ready to strike? Are we most likely to make gains during one state of affairs in society rather than another? Will economic, military, or social crisis benefit our movement or hurt it? None of these problems is an easy one, and unfortunately the general run of laissez-faire thinkers and activists has devoted very little time to considering, let alone solving, them.

In this essay, we consider some outstanding laissez-faire intellectuals of the past, and how they went about pondering the problems of social change. And, in particular, as intellectuals, what they thought the role of intellectuals (perhaps including themselves) should be in fostering such change.

1. Retreatism: Taoism in Ancient China

The first libertarian intellectual was Lao-tzu, the founder of Taoism. Little is known about his life, but apparently he was a personal acquaintance of Confucius in the late sixth century B.C. and like the latter came from the state of Sung and was descended from the lower aristocracy of the Yin dynasty. Unlike the notable

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apologist for the rule of philosopher-bureaucrats, however, Lao-tzu developed a radical libertarian creed. For Lao-tzu the individual and his happiness was the key unit and goal of society. If social institutions hampered the individual's flowering and his happiness, then those institutions should be reduced or abolished altogether. To the individualist Lao-tzu, government, with its "laws and regulations more numerous than the hairs of an ox," was a vicious oppressor of the individual, and "more to be feared than fierce tigers." Government, in sum, must be limited to the smallest possible minimum; "inaction" was the proper function of government, since only inaction can permit the individual to flourish and achieve happiness. Any intervention by government, Lao-tzu declared, would be counterproductive, and would lead to confusion and turmoil. After referring to the common experience of mankind with government, Lao-tzu came to this incisive conclusion: "The more artificial taboos and restrictions there are in the world, the more the people are impoverished. . . . The more that laws and regulations are given prominence, the more thieves and robbers there will be."

The wisest course, then, is to keep the government simple and for it to take no action, for then the world "stabilizes itself." As Lao-tzu put it, "Therefore the Sage says: I take no action yet the people transform themselves, I favor quiescence and the people right themselves, I take no action and the people enrich themselves. . . ."

Lao-tzu arrived at his challenging and radical new insights in a world dominated by the power of Oriental despotism. What strategy to pursue for social change? It surely was unthinkable for Lao-tzu, with no available historical or contemporary example of libertarian social change, to set forth any optimistic strategy, let alone contemplate forming a mass movement to overthrow the State. And so Lao-tzu took the only strategic way out that seemed open to him, counseling the familiar Taoist path of withdrawal from society and the world, of retreat and inner contemplation.

I submit that while contemporary Taoists advocate retreat from the world as a matter of religious or ideological principle, it is very possible that Lao-tzu called for retreat not as a *principle,* but as the only strategy that in his despair seemed open to him. If it was hopeless to try to disentangle society from the oppressive coils of the State, then he perhaps assumed that the proper course was to counsel withdrawal from society and the world as the only way to escape State tyranny.[2]

That retreat from the State was a dominant Taoist objective may be seen in the views of the great Taoist Chuang-tzu (369–c. 286 B.C.) who, two centuries after Lao-tzu, pushed the master's ideas of laissez faire to their logical conclusion: individualist anarchism. The influential Chuang-tzu, a notable stylist who wrote in allegorical parables, was a highly learned man in the state of Meng, and also descended from the old aristocracy. A minor official in his native state, Chuang-tzu's fame as a writer spread far and wide throughout China, so much so that King Wei of the Ch'u kingdom sent an emissary to Chuang bearing great

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gifts and urging him to become Wei's chief minister of state. Chuang-tzu's scornful rejection of the king's offer is one of the great declarations in history on the evils underlying the glittering trappings of State power; it was a fitting declaration from the man who was perhaps the world's first anarchist:

> A thousand ounces of gold is indeed a great reward, and the office of chief minister is truly an elevated position. But have you, sir, not seen the sacrificial ox awaiting the sacrifices at the royal shrine of state? It is well cared for and fed for a few years, caparisoned with rich brocades, so that it will be ready to be led into the Great Temple. At that moment, even though it would gladly change places with any solitary pig, can it do so? So, quick and be off with you! Don't sully me, I would rather roam and idle about in a muddy ditch, at my own amusement, than to be put under the restraints that the ruler would impose. I will never take any official service, and thereby I will satisfy my own purposes.

Chuang-tzu reiterated and embellished Lao-tzu's devotion to laissez faire and opposition to state rule: "There has been such a thing as letting mankind alone; there has never been such a thing as governing mankind [with success]." In fact, the world simply "does not need governing; in fact it should not be governed." Chuang-tzu was also the first to work out the idea of "spontaneous order," developed particularly by Proudhon in the nineteenth and by F. A. Hayek of the Austrian School in the twentieth century: "Good order results spontaneously when things are let alone."

Chuang-tzu, moreover, was perhaps the first theorist to see the State as a brigand writ large: "A petty thief is put in jail. A great brigand becomes a ruler of a State." Thus the only difference between State rulers and out-and-out robber chieftains is the size of their depredations. This theme of ruler-as-robber was to be repeated, independently of course, by Cicero and then by St. Augustine and other Christian thinkers in the Middle Ages.[3]

2. La Boétie: Philosopher and Strategist of Civil Disobedience

The first modern libertarian political philosopher was a young French aristocrat of the mid-sixteenth century, Étienne de La Boétie (1530–1563). La Boétie's father was a royal official in the Perigord region in southwestern France; his mother was the sister of the president of the Bordeaux Parlement. Orphaned at an early age, Étienne was brought up by his uncle and namesake, the curate of Bouilhonnas. Receiving his law degree from the University of Orleans in 1553, La Boétie promptly gained a royal appointment to the Bordeaux Parlement, where he pursued a distinguished career as judge and diplomat until his untimely death in 1563 at the age of thirty-two. La Boétie was also known as a distinguished poet and humanist, translating Xenophon and Plutarch, and closely connected with the Pléiade, the leading group of young poets in France.

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There was nothing libertarian about La Boétie's public career. Indeed, shortly before he died, he wrote but did not publish a manuscript, a "Memoir Concerning the Edict of January, 1562," in which La Boétie urged the French state to punish Protestant leaders as rebels and enforce Catholicism on France.[4]

La Boétie's great contribution to libertarian thought came while he was an unhappy law student, going through the sixteenth-century equivalent of a modern bohemian or "hippie" period of discontented youth. In addition, the University of Orleans was going through an intellectually exciting era of free inquiry and religious ferment. La Boétie's major mentor at the university was the fiery Anne du Bourg, not yet a Protestant but tending rapidly in that direction; only six years after La Boétie's graduation, du Bourg was to become a Huguenot martyr, burned at the stake for heresy. It was in this period of ferment that La Boétie composed his brief, but scintillating, profound, and deeply radical *Discourse of Voluntary Servitude (Discours de la Servitude Voluntaire.)* The *Discourse* was never published by La Boétie, but circulated widely in manuscript, *samizdat*-style form, and gained considerable fame in Perigordian intellectual circles.[5]

In the first place, a century before Hobbes and Locke, La Boétie used abstract, deductive reasoning to argue for the absolute, universal natural rights of liberty for every individual. Whereas the later radical Huguenot monarchomachs of the 1570s and 1580s used narrowly legal and historical arguments on behalf of French liberties, La Boétie dealt in timeless and general principles discoverable by reason, taking his historical examples solely from classical antiquity.

Secondly, La Boétie widened the classical and medieval concept of "tyranny" from vaguely defined one-man misrule to any State that violated the natural rights of the individual. Moreover, in another outstanding contribution, "tyranny" was broadened from the misrule of one despot to a State apparatus that serves the despot and shares in the privileges and exactions of State rule.

Third and most significant, La Boétie, two centuries before David Hume, saw that all tyranny, regardless how coercive or despotic, must rest in the long run on the consent of the majority of the people, since neither one man nor even a minority constituting the State apparatus can physically coerce the majority for very long. While, as La Boétie pointed out, every State rule originated in coercion and conquest, for the ruler to *remain* in power there must be consent by the general public.

If, then, State tyranny is kept in power by popular consent, the way to get rid of that power, the strategy for the achievement of liberty, becomes crystal clear. For the first time in the history of political thought, La Boétie concluded that the way to get rid of State tyranny is simple: a mass refusal to obey the orders of the State, especially the payment of the State's coerced taxes and exactions. There is no need to overthrow tyrants by force, La Boétie pointed out: "Obviously there is no need of fighting to overcome this single tyrant, for he is automatically defeated if the country refuses consent to its own enslavement." All that need

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happen is for the tyrants to be deprived of the public's continuing supply of funds and resources. If they "are simply not obeyed," the tyrants become "undone and as nothing." La Boétie stirringly exhorts the "poor, wretched, and stupid peoples", blind to their own good, deprived and plundered of their properties and homes, to cast off their chains by refusing to supply the tyrants any further with the instruments of their own oppression. The tyrant, he points out, has

> nothing more than the power that you confer upon him to destroy you. Where has he acquired enough eyes to spy upon you, if you do not provide them yourselves? How can he have so many arms to beat you with, if he does not borrow them from you? The feet that trample down your cities, where does he get them if they are not your own? How does he have any power over you except through you?

The answer, then, is not upheaval and bloodshed, but merely "willing to be free." In short,

> Resolve to serve no more, and you are at once freed. I do not ask that you place hands upon the tyrant to topple him over, but simply that you support him no longer; then you will behold him, like a great Colossus whose pedestal has been pulled away, fall of his own weight and break in pieces.[6]

But if tyranny necessarily rests on popular consent, *why* do the masses customarily give such consent, and thereby support their own misery and destruction? Logically, then, La Boétie was led to what he considered the central problem of political theory, what we might call "the mystery of civil obedience." Or, why in the world do people continue to consent to their own enslavement? Why do people, in all times and places, obey the commands of a small minority of society that constitutes the government? Why, La Boétie cries out in anguish, why, when reason teaches us the justice of natural rights and equal liberty for all, why, when even animals display a natural instinct to be free, is man, "the only creature really born to be free, [lacking] the memory of his original condition and the desire to return to it?"[7] Why, in short, are people steeped in such a "vile" and "monstrous vice" as consenting to their own subjection?

La Boétie answers, first, that the difficult act of initially establishing tyrannical State power is accomplished through some form of conquest, either by a foreign power, an internal coup, or by the use of a wartime emergency as an excuse to fasten a permanent despotism upon the public. And why then do people continue to consent?

In the first place, explains La Boétie, there is the insidious power of habit, which quickly accustoms and inures the public to any institution, including its own enslavement.

> It is true that in the beginning men submit under constraint and by force; but those who come after them obey without regret and perform willingly what their predecessors had done because they had to. This is why men born

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> under the yoke and then nourished and reared in slavery are content, without further effort, to live in their native circumstance, unaware of any other state or right, and considering as quite natural the condition into which they are born. . . .

Thus humanity's natural drive for liberty is overpowered by the force of custom, "for the reason that native endowment, no matter how good, is dissipated unless encouraged, whereas environment always shapes us in its own way. . . ." Hence, people will

> grow accustomed to the idea that they have always been in subjection, that their fathers lived in the same way; they will think they are obliged to suffer this evil, and will persuade themselves by example and imitation of others, finally investing those who order them around with proprietary rights, based on the idea that it has always been that way.[8]

And so consent of the public need not be eager or enthusiastic, but rather of the resigned "death and taxes" variety. But second, the State apparatus need not wait for the slow workings of custom; consent can also be engineered. La Boétie proceeds to discuss the various devices by which rulers engineer such consent. One time-honored device is circuses, for the entertainment of the masses:

> Plays, farces, spectacles, gladiators, strange beasts, medals, pictures and other such opiates, these were for ancient peoples the bait toward slavery, the price of their liberty, the instruments of tyranny. By these practices and enticements the ancient dictators so successfully lulled their subjects . . .that the stupified peoples, fascinated by the pastimes and vain pleasures, . . .learned subservience as naively, but not so creditably, as little children learn to read by looking at bright picture books.[9]

Another important device for gaining the consent of the public is duping them into believing that the rule of the tyrant is wise, just, and benevolent. In modern times, La Boétie notes, rulers "never undertake an unjust policy, even one of some importance, without prefacing it with some pretty speech concerning public welfare and common good." Reinforcing ideological propaganda is deliberate mystification. Thus the ancient kings set up the idea in the minds of the public that they were above ordinary humans and close to gods. Symbols of mystery and magic were woven around the Crown, so that "by doing this they inspired their subjects with reverence and admiration." Sometimes tyrants have gone so far as to impute to themselves the very status of divinity. In this way, "tyrants, in order to strengthen their power, have made every effort to train their people not only in obedience and servility toward themselves, but also in adoration."[10]

Circuses, specious ideology, mystery—in addition to these purely propagandistic devices, rulers have used another strategem to obtain the consent of their subjects: purchase by material benefits, bread as well as circuses. The distribution of largesse to the people is a particularly cunning method of duping them into believing that they benefit from tyrannical rule. For

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> the fools did not realize that they were merely recovering a portion of their own property, and that their ruler could not have given them what they were receiving without having first taken it from them. . . . The mob has always behaved in this way—eagerly open to bribes.[11]

Finally, La Boétie comes to another highly important and original contribution to political theory: the broadening of the concept of tyranny from one man to an entire State apparatus. This is the establishment, as it were, by permanent and continuing purchase, of a stable hierarchy of subordinate allies, a loyal band of retainers, praetorians, and bureaucrats. La Boétie considers this factor "the mainspring and secret of domination, the support and foundation of tyranny." For here is a large sector of society that is not merely duped with occasional negligible handouts from the State; but who make a handsome and permanent living out of the proceeds of despotism. Hence, *their* stake in despotism is not dependent on illusion, habit, or mystery, but is all too great and real. In this way, an elaborate hierarchy of patronage from the fruits of plunder is created and maintained. A large number of men thus permeate down through the ranks of society, and "cling to the tyrant by this cord to which they are tied." In short, "all those who are corrupted by burning ambition or extraordinary avarice, these gather around him and support him in order to have a share in the booty and to constitute themselves petty chiefs under the big tyrant." It is true that they, too, are subjects and suffer at their leader's hands, but in return for that subjection, these subordinates are permitted to oppress the remainder of the public.[12]

On deeper reflection, then, the strategy for the achievement of liberty is not so simple; for even though mass civil disobedience is the master key, how is the public to be brought to such an action, blinded as they are by a network of habit, propaganda, and special privilege? But La Boétie does not despair. For one thing, not *all* the public is deluded or sunk into habitual submission. Environment may influence, but it does not determine; for, in contrast to "the brutish mass," there is always a more percipient remnant, an elite who will understand the reality of the situation: "There are always a few, better endowed than others, who feel the weight of the yoke and cannot restrain themselves from attempting to shake it off." These are people who possess clear and far-sighted minds, who will never disappear from the earth: "Even if liberty had entirely perished from the earth, such men would invent it." It is true that rulers invariably attempt to control and suppress genuine education in their realms, depriving the elite of freedom of speech and action, and thereby of making converts. But still, there are always heroic leaders who can arise from the mass, leaders who will not fail "to deliver their country from evil hands." This knowledgeable and valiant elite, then, will form the vanguard of the revolutionary resistance movement. Through a process of educating and rousing the public to the truth, they will give back to the people knowledge of the blessings of liberty and expose the myths and illusions fostered by the State. Furthermore, they will be helped, as La Boétie indicates, by the

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fact that even the privileged courtiers and favorites lead miserable, cringing lives and that therefore at least some of them will join the popular resistance and thereby split the ruling elite.[13]

Étienne de La Boétie was therefore the first modern libertarian theorist, who also—and remarkably—offered a strategic theory that stemmed logically from his analysis of the groundwork of State power. But what did he personally do about it? Did he, to use Marxian jargon, unite theory and praxis in his own life?

Certainly not; ironically, La Boétie demonstrated that he may have been a member of a knowledgeable elite but scarcely a valiant one. Not publishing the *Discourse,* he took his appointed place in the ruling elite; and as Professor Keohane states, "Whether he ever mused on the irony of finding himself a prominent part of the network he had once condemned so scathingly, we cannot know."[14]

It is not uncommon, of course, for ardently radical university students to settle quickly into a comfortable and respectable conservatism, once entrenched in the privileges and emoluments of the status quo. But there is a bit more here than that. For even the brilliantly radical argument of the *Discourse* contained the seeds of its own decay. The very abstractness and universality of its methodology, the failure to apply the doctrine to concrete conditions of sixteenth-century France, meant that when La Boétie's own interests shifted inevitably from the abstract to the concrete in his busy adult career, it was all too easy for him to drop his youthful and abstract radicalism. His original failure to integrate theory and practice, general doctrine and concrete application, paved the way for the theory's demise, at least in La Boétie's own life.

But the ultimate fate of the *Discourse* furnished a counter-irony. For if his abstract method permitted La Boétie to abandon his radicalism swiftly in the real world, it had an opposite effect on later readers. Its very timelessness makes the work eternally available—to be applied concretely in a radical manner to later institutions and generations. Thus the *Discourse* was first published, not by La Boétie or his heirs or assigns, but anonymously and incompletely in the radical Huguenot pamphlet *Le Reveille-Matin des François* (1574) probably written by a member of the late Admiral Coligny's staff with the collaboration of the great Calvinist Theodore Beza. The full text of the *Discourse,* this time with the author's name included, appeared for the first time two years later, in a collection of radical Hugenot essays compiled by a Calvinist minister at Geneva, Simon Goulart.[15]

La Boétie's close friend, the essayist Michel de Montaigne, who had intended to publish the *Discourse* himself, was furious at its appropriation by the radical Huguenots. Montaigne now refused to carry on his project, and, to counter the Huguenots, launched a disinformation campaign, claiming that his friend had only been eighteen, and then finally sixteen, years old when he wrote the essay. In that way, Montaigne could defuse the embarrassing radicalism of the *Discourse* by passing it off as a juvenile, though precocious, flight of rhetorical fancy, meaningless in content. And even the Huguenots used the radical pamphlet somewhat

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gingerly. It is true that the Huguenot pamphlet *La France Turquie* (1575) picked up La Boétie's call for mass civil disobedience by advocating an association of towns and provinces to refuse to pay all taxes to the State. But, overall, as Laski wittily wrote, "Attractive as was the spirit of La Boétie's essay, avowed and academic republicanism was meat too strong for the digestion of the time. Not that La Boétie was entirely without influence; but he was used as cautiously as an Anglican bishop might, in the [eighteen]-sixties, have an interest in Darwinism."[16]

Almost completely forgotten in the more peaceful days of seventeenth century France, the *Discourse* became known, though not very influential, in the eighteenth century by being printed as a supplement to Montaigne's essays. Unsurprisingly, however, the *Discourse* found its audience in the stormy times of the French Revolution, when it was twice reprinted. The fiery Abbé de Lamennais later reprinted the *Discourse* with a "violent" preface of his own, and the same was done by another writer in 1852 to strike back against the *coup d'état* of Napoleon III. Later in the nineteenth century, La Boétie's essay inspired the nonviolent wing of the anarchist movement. Indeed, Leo Tolstoy, in setting forth his doctrine of civil disobedience and nonviolent anarchism, cited a lengthy passage from the *Discourse* as the source for the development of his argument. Furthermore, Tolstoy's *Letter to a Hindu,* which played a central role in shaping Gandhi's thinking toward mass nonviolent action, was heavily influenced by La Boétie.[17] In the early twentieth century, the leading German anarchist Gustav Landauer, after becoming converted to a pacifist approach, made a rousing summary of La Boétie's *Discourse* the central core of his work, *Die Revolution* (1919). And the leading Dutch pacifist-anarchist of the twentieth century, Bartelemy de Ligt, devoted several pages of his *Conquest of Violence* to discussion and praise of the *Discourse* and translated it into Dutch in 1933.[18] Thus, as the centuries went on, the speculative doctrines of the young Orleans law student were able to take posthumous revenge on the respectable and eminent official of the Bordeaux Parlement.[19]

3. Converting the Monarch: Revolution from the Top

Retreatism was a counsel of despair rather than a strategy, while mass civil disobedience seemed to appeal only to a heroic minority. Neither appeared to be a viable strategy for social change toward liberty and laissez faire. The victory of the centrist *politiques* at the end of the sixteenth century in France paved the way for a growing and centralizing royal absolutism. And that absolutism grew apace with the crushing of the Fronde and other popular rebellions during the mid-seventeenth century. Finally, absolutism reached its apogee in the reign of the Sun King, Louis XIV. However, opposition to royal absolutism and mercantilist statism began to grow in the 1680s and 1690s among merchants and aristocrats, and some leading bureaucrats, churchman, and theorists.

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A new and more pragmatic viewpoint began to develop. Why not abandon the fruitless idea of organizing mass opposition to the king? Why not short-circuit the problem of social change by converting the king and have him impose liberty from the top down, thus avoiding any radical change in the nation's political institutions? To effect this strategy, the new oppositionists and libertarians had to employ basically utilitarian arguments. Even proponents of natural rights, such as the Physiocrats in the mid- and later eighteenth century, employed utilitarian arguments to convince the king and the ruling aristocracy of the overriding importance of such rights. Basically, the theme, employing both natural rights and free-market approaches, was that property rights and laissez faire would benefit the entire nation, would advance the happiness and prosperity of everyone. And if the nation would benefit, so too would the king.

a. Archbishop Fénelon and the Burgundy Circle

One of the most influential centers of libertarian opposition to the absolutism of Louis XIV was headed by the highly devout François de Salignac de la Mothe, Archbishop Fénelon of Cambrai (1651–1715). Fénelon was a friend and student of Abbé Claude Fleury (1640–1723) who, as a young theologian, had launched the anti-statist opposition in the early 1670s. Young Fénelon found that he could exercise maximal influence on the Court by getting appointed to the post of religious confessor and instructor to the king's mistress, the Madame Françoise d'Aubigné, the Marquise de Maintenon (1635–1719). From this position during the 1680s Fénelon got himself appointed in 1689 as preceptor to the royal children, in particular the young Duke of Burgundy, grandson of Louis XIV, who seemed destined one day to be king.

Fénelon's strategy to achieve liberty, then, was to organize a group of tutors to the young dauphin, to convert the future king to the libertarian creed, and, then, when he assumed power, to achieve the libertarian revolution from the top down. Assisted by Fleury, Fénelon indeed succeeded in making a disciple of the Duke of Burgundy, and his Burgundy Circle became an active and knowledgeable focus of opposition to the statism and mercantilism of Louis XIV. Fénelon was particularly incensed at the continuing wars and their attendant crushing burden of taxation and ruin of trade. In an anonymous letter to the king in 1693, which he probably sent only to Madame de Maintenon, Fénelon denounced the unending "bloody" wars, which with their taxes have destroyed trade and crippled the poor, driving the people to desperation, "by exacting from them for your wars, the bread which they have endeavored to earn with the sweat from their brows."

In his political novel, *Aventures de Télémaque,* written for the instruction of the young duke, Fénelon spoke through Mentor, a wise man among the Phoenicians, who explained to young prince Télémaque how the Phoenicians were able to flourish so remarkably in world trade:

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> Above all never do anything to interfere with trade in order to turn it to your views. The Prince must not concern himself with trade for fear of hindering it. He must leave all profits to his subjects who earned them, otherwise they will become discouraged . . .[20]

The Burgundy Circle seemed close to the achievement of their cherished goals when the Grand Dauphin, son of Louis XIV, died in 1711 and the Duke of Burgundy became first in line for the throne. But tragedy struck again the following year, when the duke, his wife, and eldest son died of measles. In despair, Fénelon wrote to a friend, "Men work by their education to form a subject full of courage and ornamented by knowledge; then God comes along to destroy this house of cards . . ."

The sudden and tragic end of the Burgundy Circle illuminates one problem with the idea of converting a king (in this case a future king): If that one person dies or disappears, the entire strategy for liberty disappears with it.[21]

b. Quesnay, Physiocracy, and Turgot

Some fifty years after Fénelon's attempt, François Quesnay (1694–1774) organized a movement to convert the existing French king (as well as all others) and not merely a future one. In contrast to Fénelon's search for special influence at court, Quesnay had achieved his influence before becoming interested in social or economic ideas. A distinguished surgeon and physician, Quesnay had written widely on medicine as well as agricultural technology, his celebrity in medicine earning him the post in 1749 of personal physician to the mistress of King Louis XV, the Madame de Pompadour. A few years later, Quesnay became personal physician to the king himself.

It was in the late 1750's, when he was in his mid-sixties, that the court physician began to dabble in economic topics. The founding of Quesnay's physiocratic movement may be dated precisely at the moment in July 1757 that the guru met the man who would become his chief adept and propagandist, the restless, flighty, enthusiastic and slightly crackpot Victor Riquetti, Marquis de Mirabeau (1715–1789). Mirabeau had just achieved fame by publishing the first several parts of a multi-part work, that promptly became a best seller, the flamboyant, unsystematic and grandiloquently entitled *The Friend of Man (L'ami des hommes)*.

The fateful meeting of the two meant that the seemingly harmless ruminations of the court physician became physiocracy, a school of thought. Bolstered by Quesnay's crucial place at court and by Mirabeau's fame and energy, physiocracy soon became a formidable and influential school, conducting operations through a succession of journals, as well as by regular Tuesday evening seminars, or salons, held at the home of Mirabeau. The physiocrats favored an absolute monarch who would install and enforce a system of absolute and natural property rights for all, as well as its corollary, a laissez-faire economic system. The physiocrats also

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had a special concern for agriculture, reflecting the interests of their founder, including the view that only land was productive.

In many ways, the physiocratic school became a personality cult for Quesnay. His followers claimed, with little evidence, that Quesnay looked like Socrates, and they habitually referred to him as the "Confucius of Europe." Indeed, Mirabeau went so far as to proclaim that the three greatest inventions in the history of mankind had been writing, money, and Quesnay's famous diagram, The *tableau economique.*

Most physiocratic hopes in politics rested on the formidable figure of Anne Robert Jacques Turgot, the Baron de l'Aulne (1727–1781). But while he was a political ally of the physiocrats in their drive toward free trade and laissez faire, Turgot was by no means a physiocrat in economic theory. Believing neither in land as the only productive factor nor in the proto-Keynesian *tableau economique,* Turgot was in fact a brilliant and creative pioneer in what later would become the Austrian school of economics.[22]

A. R. J. Turgot was born to a distinguished Norman family of royal officials and administrators, and then took his own place in the top levels of the royal bureaucracy. He learned administration as well as devotion to laissez faire from his great friend and mentor, Jacques Claude Marie Vincent, the Marquis de Gournay (1712–1759), a successful merchant who then became a royal inspector and minister of commerce. In addition, Turgot reported a family tradition that the phrase "laissez faire" had been invented by the wealthy Norman merchant, Thomas Le Gendre, a close friend of Turgot's grandparents. When asked how Colbert could best help trade, Le Gendre had replied, "laissez-nous faire."

Turgot's strategy was to rise in the French bureaucracy, and then to effect laissez-faire reforms when he became Controller-General (finance minister). While this depended on the conversion of the king, Turgot did not really share the physiocrats' enthusiasm for an absolutist king who could establish their reforms. One of Turgot's most incisive epigrams, delivered to a friend, revealed both his political and religious views: "I am not an *Encyclopédiste* because I believe in God; I am not an *economiste* [physiocrat] because I would have no king." Turgot had concluded that the best form of government, and the one most likely to lead to laissez faire and the protection of property rights, was a constitutional republic "in which all property owners have an equal right to participate in legislation." But, in common with his young friend and disciple, the mathematician and *philosophe* Marie Jean Antoine Nicholas de Caritat, the Marquis de Condorcet (1743–1794), Turgot was willing to settle for influencing and converting an existent monarch. As Condorcet's biographer writes, "the monarchical regime had the great advantage of offering a clear locus of power to be captured for the public good by men of reason and goodwill." The biographer aptly calls this creed a "view of the redemption of monarchical power by reason, this eighteenth-century version of the withering away of the state."[23]

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The laissez-fairists finally got the chance for their noble experiment in 1774, when Turgot was named Controller-General. Turgot gathered about him as top aides a galaxy of ideologues of the movement, including Condorcet and the youngest and last of the major physiocrats, Pierre Samuel Dupont de Nemours (1739–1817). The first act of the new administration was the edict of September 13, decreeing the freedom of import and export, internal and external, of all grain. The preamble of the edict, drawn up by Dupont, was designed to educate the public on the reasons for this crucial measure. The new free trade policy, declared the preamble, was designed

> to animate and extend the cultivation of the land . . to remove monopoly by shutting out private license in favor of free and full competition, and by maintaining among different countries that communication of exchange of superfluities for necessities which is conformable to the order established by Divine Providence.[24]

Free trade in grain, however, ran into a storm of protest, from bureaucrats, restrictionists, and the masses of people who clamored for artificially cheap bread and failed to understand that these price controls brought about the very shortage of bread that drove them to riot and looting.

The undaunted Turgot pressed on, however, with his policy of sweeping laissez-faire reform. Egged on by the eager Condorcet, Turgot presented his Six Edicts, which included the abolition of the infamous *corvées*—the system of forced labor on the State roads. Since the replacement of forced by free labor meant an increase in property taxes, the aristocracy bitterly fought the abolition of the *corvées*. More ominously, this libertarian reform was resisted and intrigued against by none other than Trudaine de Montigny, head of the Department of Bridges and Roads, and Turgot's old friend and fellow laissez-faire reformer. Once Trudaine entered office, he began to feel the tug of bureaucratic interest more than what he admitted was the call of justice: employing forced and therefore cheap labor was very convenient to the Ministry, making it virtually independent of the limitations of the State's budgetary process.

After a month of fierce debate within the royal council, the Six Edicts were submitted to the Parlement of Paris in early February, 1776. There the edicts, in particular the abolition of the *corvées* and the guilds, ran into fierce opposition, scarcely mollified by anonymous (but transparent) and fiery pamphlets published by Condorcet, bitterly attacking the *corvées* and raising the explosive question of abolishing the feudal dues. The Parlement defended the existing order in the way that conservatives have traditionally argued against proposals for any substantive radical change, whether coming from libertarians or socialists. Invoking divine sanction and historical precedent, the Parlement denounced "a project stemming from an inadmissible system of equality" and the "uniform yoke of a land tax."[25] It makes a great deal of difference, of course, whether

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the equality sought is of rights or taxation, on the one hand, or of income or wealth on the other.

For a fleeting moment, the king insisted on imposing the Six Edicts by his own absolute authority over the Parlement. But a combination of parlementary resistance and ministerial intrigue at last did Turgot in, and he was forced to resign in mid-May, 1776. The Turgot reforms were promptly quashed by the exuberant defenders of the old statist order. The noble experiment in laissez-faire reform, the "reign of philosophy," was over. From now on there was no drive for reform until the advent of the French Revolution.

The last hope of the philosophes and of the physiocrats was now shattered. Turgot's reign was their last flourish. Already, they had begun to slip in influence with Quesnay's loss of interest in physiocracy in the early 1770s, his restless mind moving on to works on mathematics, where he claimed to have solved the age-old problem of squaring the circle. Quesnay's death in 1776 together with the public smear campaign heaped upon Mirabeau by his wife and children in a bitter family quarrel around the same time as Turgot's ouster, helped shatter the physiocratic movement.

As for the philosophes, the head of their main salon (and the mistress to the great d'Alembert), Mlle. Julie de Lespinasse, warned Condorcet at the beginning of the experiment that "if it is impossible for him [Turgot] to do good we shall be a thousand times more miserable than we were before, because we shall have lost the hope that alone sustain the wretched." And indeed when Turgot fell, Condorcet wrote in despair to his master, Voltaire, "This event has changed the whole of nature for me. I no longer take the same pleasure in this beautiful countryside, where he would have brought forth happiness. . . . How far we have fallen, my dear and illustrious master, and from such a height." And so both Turgot and Condorcet retired from public life, Turgot contentedly to his study, and the younger Condorcet reluctantly to the world of academia. As Condorcet remarked to Voltaire, "We have had a fine dream but it was too short. I am going to apply myself again to mathematics and philosophy. But it is comfortless only to be able to work for one's own petty glory, when one has imagined for a while that one was working for the public good."[26] Condorcet, of course, returned to the political sphere upon the onset of the French Revolution, with disastrous consequences to himself.

The repeated failures of a century of attempts to convert the absolute monarch of France to laissez faire indicates a fundamental flaw of this seemingly simple strategy. For is it really true that it is to the king's personal interest to protect the natural rights and freedom of his subjects? Certainly in the short run, and perhaps even in the long run, the king's revenue (to say nothing of his power) may well be maximized by tyrannically sweating his subjects to attain the greatest possible income for himself and his political favorites and allies. In the final analysis, reliance on the altruism of an absolute monarch seems a highly shaky

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basis for a strategy to promote laissez faire. And if the laissez-faire theorists had put more reliance on the thorny and much longer run strategy of leading a mass opposition movement from below, it is possible that they would have been able to guide the French Revolution into far more libertarian paths.

4. The Cadre Leading the Mass: the "Leninism" of James Mill

James Mill (1773–1836) is one of the most neglected and underrated figures in the history of social thought. Son of a poor Scottish shoemaker, Mill studied at Edinburgh under Adam Smith's leading disciple, Dugald Stewart. Though trained for the Presbyterian ministry, Mill failed to find a ministerial post amidst an increasingly fundamentalist and antiintellectual Scottish climate, and from then until middle age Mill made his way in London as a chronically impoverished free-lance writer. Finally, after writing a mammoth *History of India,* Mill landed a full-time, major post at the East India Company.

James Mill may be designated as the "Lenin"—even the "Marx"—of the Philosophic Radicals. A cadre leader by temperament and personality, Mill was dedicated, energetic, and prodigiously productive. He wrote important books, journal articles, and newspaper articles on virtually every topic concerned with human action, including philosophy, psychology, political science, history, economics, and education. He organized everyone around him, friends, alleged mentors, acquaintances, and his team of Philosophic Radicals in Parliament. He even organized his son in one of the most famous—or infamous—feats in the history of education.

His enormous output was fueled and guided by his magnificently consistent, logical, and lucid mind, which fastened upon a set of hard-core axiomatic principles that he then applied to all of the human sciences as well as to political action. The muddle-headed have always denounced him, as they have other cadre leaders, as "dogmatic" and "doctrinaire." Mill's triad of basic axioms were utilitarianism, democracy, and laissez faire, and his writing and political maneuvers were pointed toward those principles and objectives.

James Mill is also rare in the history of thought in deliberating *under*weighting his own intellectual achievements. A refreshing trait indeed in a field where many men—e.g., Adam Smith—have been marked by a Columbus complex! And yet Mill always claimed to be only a humble number two man, a "Lenin" to two "Marxes"—Bentham in philosophy and Ricardo in economics. Hence his general dismissal as a mere vulgarizer of and propagandist for these two great men. Actually, it was Mill, in the course of his close relationship to Bentham as secretary and live-in aide, who converted the old man into adopting democracy and universal suffrage as the political-philosophic conclusion of his utilitarianism. Bentham, a former Tory, was ripe for such conversion, having become bitterly disgruntled with the existing aristocratic system for having failed to adopt his bizarre Panop-

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ticon scheme, in which a major portion of the British population—the poor, schoolchildren, and prisoners, among others—would be incarcerated in "scientifically" designed concentration and slave labor camps, all for the proprietary profit of Bentham himself.[27] Bentham was therefore ripe for conversion to democracy, where his scheme could do no worse, and might do better.

On Ricardo, recent research is making it clear that Mill was the youngish retired stockbroker's mentor and master, not only in general intellectual but also in economic matters. And so Mill happily organized his good friend, hectored, cajoled, prodded, and bullied him into becoming the "Marx," the great economist that Mill for some reason did not propose to be. He pestered Richardo into writing and finishing his *Principles of Political Economy and Taxation* (1817), looking over, editing, and probably adding to many drafts of this work. After that, Mill pressed Ricardo into entering Parliament to take an active role among the Radicals. It also turns out that Mill, not Ricardo, was probably responsible for much of the Ricardian system itself, including the justly famous Law of Comparative Advantage.[28]

It is possible that James Mill's excess of humility was caused, not by psychological traits, but by his financial position vis-à-vis his mentors. It may have been economically prudent for the free-lance Scottish immigrant on the brink of poverty to flatter his wealthy friends, Bentham and Ricardo, and to subordinate himself to their (alleged) overriding greatness.

While, as a high official of the East India Company, he could not run for Parliament himself, Mill was the unquestioned cadre leader of the small but important group of from ten to twenty Philosophic Radicals who enjoyed a brief day in the sun in Parliament during the 1830s. Although the Radicals proclaimed themselves Benthamites, the aging Bentham had little to do personally with the group. Most of the parliamentary Philosophic Radicals had been converted personally by Mill, beginning with Ricardo over a decade earlier, and including his son John Stuart, who, after Mill's death in 1836, succeeded his father as Radical leader. James Mill had also converted the official leader of the Radicals in Parliament, the banker and historian of ancient Greece, George Grote (1794–1871). Grote, a largely self-educated and humorless man, soon became an abject disciple of James Mill. For Grote, in the words of Professor Joseph Hamburger, all of Mill's dicta "assumed the force and sanction of duties."

Charismatic, humorless, and didactic, Mill had all the strengths and weaknesses of the modern Leninist cadre type. The Millian circle also included a fiery cadre woman, Mrs. Harriet Lewin Grote (1792–1873), an imperious and assertive militant whose home became the salon and social center for the parliamentary Radicals. She was widely known as the "Queen of the Radicals," and it was of her that Cobden wrote, "had she been a man, she would have been the leader of a party." Harriet Grote testified to Mill's eloquence and charismatic effect on his young disciples, most of whom were brought into the Millian circle by his son, John

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Stuart. A typical testimony was that of William Ellis, a young friend of John's, who wrote in later years of his experience of James Mill: "He worked a complete change in me. He taught me how to think and what to live for."

We can now place in better perspective Mill's famous quasi-brainwashing education of his son, for which the bright young lad turned out not to be suited psychologically. The point is that Mill's fierce and fervent education of John Stuart was not simply the crotchet of an intellectual father trying out his theories of education; the education was specifically designed to train John for his presumptively vital and world-historical role as James's heir and successor as leader of the Radical cadre, the hoped for new "Lenin." There was considerable method in the madness.

James Mill's evangelical Calvinist spirit was tailor-made for his cadre role. During his days as a literary man in London, Mill lost his Christian faith and became an atheist, but, as in the case of many later Calvinist-trained athetist and agnostic intellectuals, he retained the grim, puritanical, crusading habit of mind of the prototypical Calvinist firebrand.[29] Mill's Calvinism was evident in his conviction that reason must keep stern control over the passions—a conviction that hardly fitted well with Benthamite hedonism. Cadre men are notorious puritans, and Mill puritanically disliked and distrusted drama or art; the actor, he complained, is "the slave of the most irregular appetites and passions of his species." Moreover, painting and sculpture were scorned by Mill—as by centuries of Calvinists—as the lowest of the arts, only serving to gratify a frivolous love of ostentation.

James Mill's passion for democracy stemmed from his libertarian theory of class analysis and class conflict, an ancestor, in a twisted way, of the more famous but hopelessly inconsistent Marxian one. Mill's theory, developed in the 1820s and 1830s, was either arrived at independently or was influenced by the early nineteenth-century theory of two French intellectuals, Charles Comte (son-in-law of J. B. Say and no relation to Auguste) and Charles Dunoyer. It is essentially a "two-class" theory of class conflict: The "ruling class" at any particular time is whatever group has managed to obtain control of State power; the "ruled class" are those groups who are taxed, regulated, and controlled by the rulers. Class interest, then, is defined by any group's relation to the State. All classes are harmonious and none conflict within the free market and free society; conflicts arise only in relation to who controls, or who is controlled by, the State.

Whether independent or not, Mill's analysis was devoid of the rich applications to the history of Western Europe that Comte, Dunoyer, and their young associate, the historian Augustin Thierry, had developed.[30] Mill was interested only in the general theory and in current applications.

Nevertheless, James Mill expressed libertarian class theory with great force and lucidity. All government, he pointed out, is run by a ruling class, necessarily the few, who dominate and exploit the ruled, the many. There are two conflicting

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classes, he declared: "The first class, those who plunder, are the small number. They are the ruling Few. The second class, those who are plundered, are the great number. They are the subject Many." Or, as Professor Hamburger sums up Mill's position: "Politics was a struggle between two classes—the avaricious rulers and their intended victims."[31]

The great problem of government, then, is how to eliminate this system of plunder, to end the power "by which the class that plunder succeed in carrying on their vocation."

All groups, Mill contended, tend to act for their selfish interest, so that it is absurd to expect the ruling clique to act altruistically for the public good. Instead, they will use their opportunities for their own gain, which means to loot the Many and to favor their own or allied special interests against that of the public. Hence Mill's habitual use of the term "sinister" interests as against the public good. Hence, too, Mill's use of the term "the people" to characterize "the subject Many", since the people have become a ruled class with a common interest in removing oppression by the sinister interests of the rulers. It should be noted, too, that for Mill and the Radicals the public good meant laissez faire, government confined to the minimal functions of police, defense, and the administration of justice.

How then to arrive at the great desideratum: to curb or eliminate the plunder of the ruling class? Mill thought he saw the answer:

> The people must appoint watchmen. Who are to watch the watchmen? [The classic problem of political theory.] The people themselves. There is no other resource; and without this ultimate safeguard, the ruling few will be forever the scourge and oppression of the subject many.

But how are the people themselves to be the watchmen? To this ancient problem Mill provided what is by now a standard answer in the Western world, but still a not very satisfactory one: by all the people electing representatives to do the watching. Hence Mill's passion for universal suffrage in frequent elections by secret ballot to put an end to the rule of the few, the aristocracy, the ruling elite.

Granted that the reign of The People would displace aristocratic rule, what reason did Mill have for thinking that they would exert their will on behalf of laissez faire? Here his reasoning was ingenious: While the ruling class enjoy in common the fruits of their exploitative rule, The People are a different kind of class, for their only interest in common is getting rid of the rule of special privilege. Apart from that, the mass of the people have no common class interest they could actively pursue by using the State. The interest of the people in ending the rule of sinister interests and insuring liberty is the universal interest of all.

How then account for the fact that no one can claim that the masses have always championed laissez faire? And, in fact, that the masses have often loyally supported the exploitative rule of the few? Clearly, because the people, in the complex field of public policy, have suffered from what the Marxists would later call "false

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consciousness,'' an ignorance of where their interests truly lie. It was therefore up to the intellectual vanguard, to Mill and his Philosophic Radicals, to educate and organize the masses so that their consciousness would become correct and they would then exert their irresistible strength to bring about democracy and laissez faire.

With radical democracy and universal suffrage set as his long-term goal, Mill, in true Leninist fashion, was willing to settle for a far less but still substantially radical ''transition demand'' as a way station: the Reform Bill of 1832, which greatly widened the suffrage to the middle class. To Mill, extension of democracy was more important than laissez faire, since the latter was supposed to be a semiautomatic consequence of the truly fundamental process of dethroning the ruling class and substituting rule by all the people. Indeed, their concentration on democracy led the Radicals, in the 1840s after Mill's death to refuse collaboration with the Anti-Corn Law League, despite their agreement on free trade and laissez-faire. To the Radicals, free trade was too much a middle-class movement that detracted from the overriding importance of democratic reform. Ironically, by rejecting this middle-class movement, they rebuffed a successful one, and this refusal to support the Anti-Corn Law League in the 1840s helped eliminate Radicalism as a powerful force in British politics.

A tactically brilliant, if morally dubious, example of Mill as successful cadre organizer and maker of history was his role as the major force in driving through the Reform Bill of 1832. Mill was the behind-the-scenes Lenin and master manipulator of the drive for the Reform Bill. His strategy was to play on the fears of the timorous and centrist Whig government by spreading the myth that the masses were ready to erupt in violent revolution if the bill were not passed. (An early example of what Tom Wolfe would recently call ''Mau-Mauing the Flak Catchers.'') Mill and the Radicals knew full well that no such revolution was in the offing, but Mill, through friends and allies placed strategically in the press, was able to orchestrate a deliberate campaign of deception that fooled and panicked the Whigs into passing the bill. The campaign of lies was waged by important sectors of the press: by the *Examiner,* a leading weekly owned and edited by the Benthamite Radical Albany Fonblanque; by the widely read *Morning Chronicle,* a Whig daily edited by Mill's old friend John Black, who made the paper a vehicle for the Radicals; and by the *Spectator,* edited by the Benthamite S. Rintoul. The *Times* was also friendly to the Radicals at this point, and the leading Birmingham Radical, Joseph Parkes, owned and edited the *Birmingham Journal.* Not only that: Parkes was able to have his mendacious stories on allegedly revolutionary public opinion in Birmingham printed as factual reports in both the *Morning Chronicle* and the *Times.*

A decade and a half after passage of the bill, John Arthur Roebuck, one of Mill's top aides in the campaign and later a Radical M.P. and historian of the drive for reform, admitted that:

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> to attain our end, much was said that no one really believed; much was done that no one would like to own . . .often, when there was no danger, the cry of alarm was raised to keep the House of Lords and the aristocracy generally in what was termed a state of wholesome terror.

In contrast to the "noisy orators who appeared important" in the campaign, Roebuck recalled, were the "cool-headed, retiring, sagacious determined men . . .who pulled the strings in this strange puppet-show." "One or two ruling minds, to the public unknown," manipulated and stage-managed the entire movement. They "use(d) the others as their instruments. . . ." And the most cool-headed, sagacious, and determined puppet master of all was James Mill.[32]

Ever the unifier of theory and praxis, James Mill paved the way for the organized campaign of disinformation by writing in justification of lying for a worthy end. While truth was important, Mill conceded, there are special circumstances "in which another man is not entitled to the truth." Men, he wrote, should not be told the truth "when they would make a bad use of it." Ever the utilitarian! Of course, as usual, it was the Utilitarian who was to decide on the goodness or badness of the other man's expected use of the knowledge.

Applying his doctrine to politics, Mill escalated his defense of lying. In politics, he asserted that deliberately disseminating "wrong information" is "not a breach of morality, but on the contrary a meritorious act . . .when it is conducive to the prevention of misrule. In no instance is any man less entitled to right information, than when he would employ it for the perpetuation of misrule."

In the late years of the twentieth century it is impossible to assemble much fervor for a Millian faith in radical democracy and the rule of the masses as a virtually automatic highroad to laissez faire. There is simply too much evidence to the contrary. A grave problem is that the very existence of the democratic institutions exacerbates the false consciousness of the masses in identifying themselves with the government in all of its actions. The concept "we *are* the government" is far more likely to arise in a democracy than in a monarchy or oligarchy, for all the manifold sins of these other forms of government. Furthermore, the Millian analysis ignores the difference made by the Iron Law of Oligarchy and by the coercive nature of government itself. A ruling class is still bound to emerge even if sanctified by the *form* of the democratic process that leads people to blur the crucial distinction between state and society.

As for the Radicals themselves, they came to a speedy end in the early 1840s. In addition to failure to latch on to the free trade movement, a split among the formerly anti-imperialist Radicals on cracking down on dissent and rebellion in Canada, put an end to Radicalism in politics—especially since John Stuart Mill, his father now safely interred, led the desertion from the Radical cause. Ironically enough, while proclaiming their weariness with politics *per se* and a return to the pursuits of theory and the academy, such Radical leaders as John Mill and the Grotes in reality gravitated with astonishing rapidity toward the cozy Whig

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center that they had formerly scorned. Their proclaimed loss of interest in politics was only a loss of interest in politics as an arena for changing the world in the direction of a principled ideal. Perhaps, in the final analysis, the Radical cadre could not long survive the death of its great founder.

5. Epilogue: Lessons for Strategy?

We have described in this paper several important libertarian intellectuals and their varying ideas of strategy for realizing the social ideal of liberty and laissez faire. Can we say that any insights or lessons have been obtained for a strategy for social change beyond simply spread the word and hope for the best? Without being dogmatic about strategy, I think we can. Apart from the various insights of these thinkers and writers about the nature of the State and of liberty, we can surely conclude that retreatism, whatever its other consolations, provides no strategy whatever for successful change. And neither, except in special circumstances, does the idea of mass civil disobedience. The only revolutions I can think of that largely succeeded by a tactic and strategy of mass civil disobedience was the Gandhi movement in India and the general strike of 1979 that toppled the Shah of Iran. In both cases the motivation and direction were sectarian and religious, and in neither case was the *result* of the revolution in any conceivable sense either nonviolent or libertarian.

The seemingly easy route of converting an absolute monarch (or modern dictator) seems fraught with too much potential for disaster. The underlying flaw is that only royal opinion, or at best the opinion of the top ranks of the elite, has been won over, without in any sense convincing the public or the masses. A revolution from the top seems doomed as a long-run strategy.

The Millian cadre concept seems the most promising of these strategic lines, but here again considerable caution is in order. Apart from the error of Mill's hyperoptimism on democracy, all movement cadre seem to fall prey to unpleasant and even counter-productive personality types and actions. There seems to be something in cadre work that attracts or nurtures humorless and puritanical fanatics. Perhaps that could be tempered by conscious efforts to cultivate humor and perspective and associate with well-rounded colleagues who appreciate sense-enjoyment as part of the truly good life. Even libertarian ideological movements in recent years have fallen prey to a cult of personality, of abject surrender to the whims and dictates of a leader, and to a willingness to commit patently immoral acts—such as systematic deception—to advance the cause. And even tiny libertarian ideological movements have sanctioned gross violations of libertarian principle as a method of advancing or maintaining their own wealth or power.

We are left with the basic strategic problem: How can a libertarian movement develop effective cohesion and leadership without falling prey to abject intellectual surrender to a glorified elite? How can we preserve a lifelong commitment

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and a sense of "protracted struggle" while avoiding single-minded fanaticism and neglect of personal goals? How can we build institutions without losing sight of the libertarian principles and goals for which we build them?

While such problems are extraordinarily difficult to solve, they clearly can never be solved unless they are thought about. While Marxists devote about 90 percent of their energies to thinking about strategy and only 10 percent to their basic theories, for libertarians the reverse is true. Little thought or discussion has been devoted to strategic or tactical problems. Perhaps this paper will stimulate thinking in this vital field.

NOTES

1. On this process, see the classic article by F. A. Hayek, "The Intellectuals and Socialism," in *Studies in Philosophy, Politics, and Economics* (Chicago: University of Chicago Press, 1967), 178–94.
2. In short, modern Taoists, neglecting the crucial libertarian content of the master's doctrine, may have mistakenly converted a desperate strategy into a matter of high principle.
3. The outstanding work on the Taoist as well as the other schools of ancient Chinese political thought is Kung-chuan Hsiao, *A History of Chinese Political Thought, Vol. I* (Princeton: Princeton University Press, 1979). For more on Chuang-tzu, see Elbert D. Thomas, *Chinese Political Thought* (New York: Prentice Hall, 1927); E. R. Hughes, *Chinese Philosophy in Classical Times* (1942, rev. ed., 1954); and Sebastian de Grazia, ed., *Masters of Chinese Political Thought* (New York: Viking Press, 1973).
4. La Boétie's *Memoir* was long forgotten until recent years. See Donald Frame, *Montaigne: A Biography* (New York: Harcourt Brace & World, 1965), 72–73, 345.
5. Thus Michel de Montaigne had read the unpublished *Discourse* long before he met La Boétie as a fellow member of the Bordeaux Parlement in 1559. The date of writing the manuscript is not precisely known, but it is most likely, and so accepted by recent authorities, that La Boétie wrote the *Discourse* in 1552 or 1553, at the age of twenty-two. See Frame, *Montaigne*, p. 71; and Pierre Mesnard, *L'Essor de la philosophie politique au XVIe siecle* (Paris: Boivin et Cie, 1936), 390–391.
6. Etienne de La Boétie, *The Politics of Obedience: The Discourse of Voluntary Servitude* (New York: Free Life Editions, 1975), 51–53.
7. La Boétie, *Discourse*, 58.
8. La Boétie, *Discourse*, 60–65. As David Hume was to put it two hundred years later: "Habit soon consolidates what other principles of human nature had imperfectly founded; and men, once accustomed to obedience, never think of departing from that path, in which they and their ancestors have constantly trod. . . ." Hume, "Of the Origins of Government," in *Essays, Moral, Political and Literary* (Oxford University Press, 1963).
9. La Boétie, *Discourse*, 69–70.
10. La Boétie, *Discourse*, 71–75.
11. La Boétie, *Discourse*, 70.
12. La Boétie, *Discourse*, 77–80. John Lewis considered this insight to be the most novel and important feature of the *Discourse*. John D. Lewis, "The Development of the Theory of Tyrannicide to 1660," in Oscar Jaszi and Lewis, *Against the Tyrant: The Tradition and Theory of Tyrannicide* (Glencoe, Ill: the Free Press, 1957), 56–57.
13. La Boétie, *Discourse*, 65–68, 79–86.
14. Nannerl O. Keohane, "The Radical Humanism of Etienne de La Boétie," *Journal of the History of Ideas*, 38 (January-March 1977): 129.
15. As the third volume of the *Memoires de l'estat de France* (1576). See J. H. M. Salmon, *The French Religious Wars in English Political Thought* (Oxford: Clarendon Press, 1959), 19 *n.*, corrected by Donald R. Kelley, *Francois Hotman: A Revolutionary's Ordeal* (Princeton Univer-

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sity Press, 1973), 234. For a complete account of the early pirated versions of the *Discourse* used by the Huguenots, see Paul Bonnefon, "Introduction" to his edition of the *Oeuvres Completes d'Estienne de La Boétie* (Paris: J. Rouam et Cie, repr. Geneva, 1967), xlix-1.

16. Harold J. Laski, "Introduction," *A Defense of Liberty Against Tyrants* (Gloucester, Mass: Peter Smith, 1963), 24, 29.
17. Leo Tolstoy, *The Law of Love and the Law of Violence* (New York: Rudolph Field, 1948), 42–45; Bartelemy de Ligt, *The Conquest of Violence* (New York: E.P. Dutton & Co., 1938), 105–106.
18. See De Ligt, *Conquest of Violence,* 104–106, 189. Also see George Woodcock, *Anarchism* (Cleveland, Ohio: World Publishing Co., 1962), 432.
19. For more on La Boétie, see Murray N. Rothbard, "Introduction: The Political Thought of Etienne de La Boétie," in La Boétie, *Discourse,* 9–42.
20. Quoted in Lionel Rothkrug, *Opposition to Louis XIV: The Political and Social Origins of the French Enlightenment* (Princeton University Press, 1965), 270.
21. For more on the Burgundy Circle see, in addition to Rothkrug, *Opposition;* Nannerl O. Keohane, *Philosophy and the State in France: The Renaissance to the Enlightenment* (Princeton University Press, 1980), 332 ff.
22. See the collection of Turgot's economic writings, in addition to thorough introductions and annotations, in P. D. Groenewegen, ed., *The Economics of A. R. J. Turgot* (The Hague: Martinus Nijhoff, 1977).
23. Keith Michael Baker, *Condorcet: From Natural Philosophy to Social Mathematics* (University of Chicago Press, 1975), 56. Condorcet himself published a life of Turgot in 1787.
24. Quoted in Henry Higgs, *The Physiocrats* (1897); rpt., New York: The Langland Press, 1952), 62.
25. See Baker, *Condorcet,* 72.
26. Baker, *Condorcet,* 80.
27. The Panopticon, central to Benthamite political thought and understandably swept under the rug by Bentham's apologists, was utilitarianism to the hilt and beyond, a genuine example of utilitarian trampling on the rights of the individual for the sake of an alleged social utility. On the Panopticon, see the properly sardonic essay of Gertrude Himmelfarb, "The Haunted House of Jeremy Bentham," *Victorian Minds* (1968, rpt., Gloucester, Mass.: Peter Smith, 1975), 32–81; Himmelfarb, "Bentham's Utopia: the National Charity Company," *Journal of British Studies,* 10 (November 1970): 80–125; and Douglas Long, *Bentham on Liberty: Jeremy Bentham's Idea of Liberty in Relation to his Utilitarianism* (Toronto: University of Toronto Press, 1977).
28. For Mill's pervasive influence on Ricardo and Ricardian economics, see T. W. Hutchison, "James Mill and Ricardian Economics: A Methodological Revolution?", *On Revolutions and Progress in Economic Knowledge* (Cambridge: Cambridge University Press, 1978). On Mill and the Law of Comparative Advantage, also demonstrating Ricardo's lack of interest in this doctrine, see William O. Thweatt, "James Mill and the Early Development of Comparative Advantage," *History of Political Economy,* 8 (Summer 1976): 207–234.
29. Professor Thomas perceptively writes: "This is why Mill, a sceptic in later life, always got on well with [Protestant] dissenters [from the Anglican Church]. . . . He may have come to reject belief in God, but some form of evangelical zeal remained essential to him. Scepticism in the sense of non-commitment, indecision between one belief and another, horrified him. Perhaps this accounts for his long-standing dislike of Hume. Before he lost his faith, he condemned Hume for his infidelity; but even when he had come to share that infidelity, he continued to undervalue him. A placid scepticism which seemed to uphold the *status quo* was not an attitude of mind Mill understood." William E. S. Thomas, *The Philosophic Radicals: Nine Studies in Theory and Practice, 1817–1841* (Oxford: Clarendon Press, 1979), 100.
30. The French theorists developed the insight that Europe had originally been dominated by a ruling class of kings, or of feudal nobility. They believed that with the rise of capitalism and free markets, of "*industrielisme*", there would be no ruling class, and the class-run State would wither away, resulting in a "classless," Stateless, free society. Saint-Simon was originally a Comte-Dunoyer libertarian, and then in later life he, and particularly his followers, changed the class analysis while keeping the original categories, to maintain that employers somehow rule or exploit the workers in a free-market wage relationship. Marx adopted the Saint-Simonian class analysis so that Marxism to this day maintains a totally inconsistent definition of class: On Asiatic despotism and feudalism, the old libertarian concept of ruling class as wielder-of-State power is maintained;

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then, when capitalism is discussed, suddenly the definition shifts to the employers forming a "ruling class" over workers on the free market. The alleged capitalist class rule over the State is only extra icing on the cake, the "super-exploitation" by an "executive committee" of a ruling class previously constituted on the market. For a brilliant critique of the inconsistencies of Marxian class theory, see Ludwig von Mises, *Socialism* 3rd ed. (Indianapolis, Ind: Liberty Classics, 1981), 292–307.

31. Joseph Hamburger, *Intellectuals in Politics: John Stuart Mill and the Philosophic Radicals* (New Haven: Yale University Press, 1965), 44. Despite its title, this book deals far more with James than John Stuart.
32. On James Mill as manipulator of the agitation for the Reform Bill, see Joseph Hamburger, *James Mill and the Art of Revolution* (Yale University Press, 1963).

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Politics after a Nuclear Crisis

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Contained in the legal systems of almost all modern liberal democratic states is the provision for extraordinary executive power to be exercised in emergencies. This power is variously called martial law, state of seige, constitutional emergency powers, and constitutional dictatorship. This power is designed for use both in the event of war and in the face of civil unrest, and many governments make extensive preparations for these contingencies.

Considering the scope and impact of constitutional emergency powers, remarkably little attention has been given to them by either supporters or critics of state power. One of the main reasons is that the problem seems remote in the lulls between emergencies, and also disturbing: Politicians certainly have nothing to gain by raising the issue.[1]

The 1980s saw an enormous upsurge in attention to the problem of nuclear war. Yet while accounts of the physical effects of nuclear war have been innumerable, there has been little mention of the likely political aftermath of a nuclear crisis or war: the problem of constitutional dictatorship in the nuclear age. This topic is my concern here.

To justify the examination of politics during and after a nuclear crisis or war, it is first necessary to show the significant possibility that these can occur without total destruction of human society. That is my first task. After a mention of some of the connections between war and political economy, I focus on "war dictatorship," namely, the subordination of societies to authoritarian states, which is a likely political consequence of nuclear crisis. Finally, I spell out a few implications of the analysis for social action to avoid the worst political consequences of nuclear crisis and war.

Can the World Survive a Major Nuclear Crisis?

Especially in the past several years, an enormous amount of attention has been given to the physical consequences of nuclear war, much of it emphasizing the

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possibility of global annihilation. The impression given is that once any sort of nuclear war occurs, there is really nothing further to consider.

My argument here is simple. Whatever the likelihood that a major nuclear confrontation will result in total annihilation of the earth's population, a significant possibility remains that nuclear crisis or war will leave major portions of the world's population alive and, for the most part, unaffected physically. If this is the case, then it is worth considering post-crisis and post-war politics.

Three types of scenarios are worth noting: nuclear crisis, limited nuclear war, and global nuclear war. First, nuclear crisis: It is possible to imagine the development of a major nuclear confrontation short of nuclear war. This might be an extended nuclear emergency, like the 1962 Cuban missile crisis, yet more serious and prolonged. It could lead to declarations of martial law and changes in political structures, as described below, that might well persist beyond the nuclear crisis itself.

Second, limited nuclear war: A nuclear war does not *have* to be global in extent. Such a war might be limited geographically—for example, to the Middle East—or restricted to the exchange of a few tactical or strategic nuclear weapons. Many analysts argue that it would be difficult to keep a nuclear exchange limited, but these arguments remain to be tested: There is no evidence of actual nuclear wars to prove or disprove them. It is worth remembering that expert predictions concerning wars (for example, that World War I would be over quickly) have often been quite wrong.

It is also possible to imagine a "successful" first strike, for example, using a few high-altitude explosions over a country to disable electronics through the electromagnetic pulse, thereby putting the enemy's command and control systems out of commission. However unlikely the success of such a tactic, it cannot be ruled out *a priori*.

Third, global nuclear war: If a nuclear war does escalate to major exchanges, does that mean that near or actual human extinction is certain? The available evidence is by no means conclusive. Although since the 1950s many people have believed that nuclear war will inevitably lead to the death of most or all the people on earth, the scientific evidence to support this belief has been skimpy and uncertain. The only mechanism currently considered to create a potential threat to the survival of the human species is the global climatic effects of smoke and dust from nuclear explosions, commonly called nuclear winter.[2] Even here, some scientists believe the effects will be much more moderate than initially proclaimed.[3] My assessment is that global nuclear war, while containing the potential for exterminating much of the world's population, might kill "only" some hundreds of millions of people—an unprecedented disaster to be sure, but far short of global annihilation.

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War and Political Economy

The relationship of war to the political and economic power relations in a society is not a simple or automatic one. For one thing, there is a mutual interaction between social structure and the type of war and military organization involved.[4] For example, highly technological warfare fosters and is fostered by an advanced industrial economy with highly trained personnel, usually full-time professionals, to design and plan the manufacture and deployment of weapons systems. While there are many connections between war and social relations, the focus here will be on some broad relations between war and the modern state.

War as State-Building

Modern war has been closely connected with the building of modern states. The modern state is built on a centralization of power once held by local entities, such as feudal estates. As trade broke down the local and regional economic independence several hundred years ago in Europe, the political basis for feudal rule was likewise undermined since the estates could no longer support adequate expenditures for defense. One of the early functions and motivations for development of state bureaucracies was establishing and administering military forces. In short, as local economic self-reliance declined, defense against external military threats passed to the developing states, whose powers were expanded to maintain military strength.

Most major social revolutions have been associated with war or the threat of it.[5] For example, one factor in the development of the French Revolution was the burden of military spending carried by the Old Regime, which faced military competition both on sea and land. Finances for this burden could not be raised in the context of the prerevolutionary social relations. The Revolution itself led to a powerful new state apparatus that enabled mass mobilization of the population for making war, and the military successes of the new French state played a major role in the creation and strengthening of other states throughout Europe.

The Russian Revolution was made possible by the exhaustion of the Tsarist state and military forces in World War I. The Provisional government sealed its doom by continuing to fight in this war. The pattern of centralization of power by the Bolsheviks was greatly hastened by the civil war of 1918–1920.

In the past fifty years, numerous new states have gained their independence in wars fought against colonial powers. The methods of guerrilla warfare, which involve mobilizing peasants for both war-making and smashing traditional social relationships, have played an important role in shaping the political and economic institutions of these new states.

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Centralized Power

Wars are fought by armies on behalf of states. Modern wars, especially those wars requiring total mobilization of a society's resources, have required a centralization of power by the state. As Randolph Bourne said during World War I, "War is the health of the state".

It has often been noted that capitalist economies are transformed into command economies in times of major war.[6] This transformation occurs because the market breaks down. Not everyone wants to do precisely what is needed to support the war effort. For example, conscription is a non-market means for building an army: There are too many people for whom no payment would be sufficient to induce them to become soldiers. In place of financial inducements and inevitable inflation, state coercion is used to manipulate or control the pattern of investment and distribution.

During wartime, power passes from capitalists to state bureaucracies. The experiences of wartime can have a lasting impact on capitalist economies by providing experiences and models for peacetime government involvement in the economy. Since World War II, military expenditures have remained at a higher level than after previous wars, providing a permanent avenue for government intervention in the economy.[7] This process has been accompanied by the expansion of state bureaucracies in areas such as medical care, education, and social welfare services. In the Third World, the penetration of Western economic systems is promoted by the military forces, which serve as models for state bureaucratization.

Military forces and military mobilization play a central role in the creation and survival of communist states. One reason that communist economies are so geared for war is that they are built on a military model, as well as being forged in war.

When the Communist state is threatened by revolts from below, the army may step in to maintain existing social relations and, in particular, to preserve state power. This intervention has been most apparent in China during the Cultural Revolution and again in 1989, and in Poland after martial law was declared in 1981. Of course, direct military intervention in Third World countries has become more the rule than the exception. Military takeovers in developed capitalist states also occur, as in Portugal and Greece.

Technology

Modern warfare has become highly technological. More important than commitment and loyalty by soldiers is state research and development and implementation of new technologies. The keys to modern war are technical expertise and bureaucratic management of the technological process. In earlier eras, technologies for fighting were simple—for example, the rifle and bayonet. Workers and peasants could fight using the weapons of their rulers, and with a reasonable chance of

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success. This is no longer true. The expert knowledge and professional training utilized by modern military forces is not available to opposition groups. Modern weapons are so lethal that the chances of success in urban guerrilla warfare are minimal.[8] The social relations embodied in modern technology favor the continued dominance of state elites. Nuclear weapons are the epitomy of technology created and deployed by states that cannot be readily used by opponents of the state.

The Problem of War Dictatorship

One of the first casualties of war is political freedom. This fact is seen most clearly in the liberal democracies, where these freedoms are widely touted, although institutional realities often restrict their applicability. In wartime, it is common for martial law (in common law countries) or a "state of siege" (in civil law countries) to be introduced. Police and other public officials are given arbitrary powers to arrest and punish people without trial, to undertake searches and seizures without warrant, to forbid public meetings, to set curfews, to suppress freedom of speech and the press and to institute courts-martial for the summary trial of crimes against the state.

In wartime state power dramatically increases, and in particular the power of the executive increases, typically that of the cabinet in parliamentary systems and of the president in presidential systems. The methods by which "constitutional dictatorship" are introduced vary from country to country and situation to situation. In some countries, such as France, the provisions for a state of seige are written into the constitution, whereas elsewhere, in the United States, for example, ad hoc measures have been taken by the executive and usually legitimized later by the legislature.[9]

It has often been remarked that the past century has seen a gradual increase in the power of the central governments. The relatively short periods of emergency rule in wartime, with dramatic increases in state powers over political and economic life, are usually followed by a return to "normalcy," but with some more lasting transfer of power to the state executive. In the United States for example, the Civil War and the two world wars each led to increased power for the president, and each of these wars is associated (usually favorably) with a "strong" president. These wars also led to a much wider role of the government in the economy.

George Orwell's *1984*, often seen solely as an indictment of Communism, captures an important truth about wider political trends in this century: the close association of war with political repression. The rise (or manufacture) of the cold war in the late 1940s allowed a continuing mobilization of military force and spending that is historically quite atypical of "interwar" periods. The military has obtained a more permanent stake in national economies, and this seems to be associated with a number of other indicators of the potential for state repression, most notably the increased role of secret police.[10]

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It has not gone unnoticed that the dictatorial powers taken on by governments in wartime are precisely the same powers that are needed to defend property and privilege against demands from the working class and other oppressed groups: "Every device of constitutional dictatorship is in its nature ideally suited to be employed as a weapon of reaction and class struggle."[11] Historically, emergency powers have been used in three types of situations: war, economic collapse, and an emergency threatening state power. The powers given to the United States government during the New Deal illustrate the use of emergency powers to deal with economic collapse. The British Emergency Powers Act of 1920, designed to deal with strikes, illustrates the use of emergency powers to deal with a threat to the state that was also a challenge from the working class against capital. During most of the period of the Weimar Republic in Germany, 1919–1933, Article 48 in the constitution, an emergency powers provision, was used regularly to govern the country. But because the German army was reactionary, Article 48 could be invoked only against challenges from the left.[12]

From the point of view of liberal democratic theory, constitutional dictatorship is a necessary evil: Occasionally it is necessary to suspend liberal democracy in order to protect it in the long run. In practice this is what has happened on a number of occasions. After the ends of wars, such as the world wars, emergency powers have been relinquished by governments. But this procedure does not always work. In the words of Carl J. Friedrich, "there are no ultimate institutional safeguards available for insuring that emergency powers be used for the purpose of preserving the constitution."[13] The number of military dictatorships imposed by invoking emergency powers designed to protect democracy is too great to enumerate. Various constitutional guarantees can be developed to limit the use of martial law and to contain the abuses that tend to develop under it, and no doubt much remains to be done in this direction.[14] But as I will argue below, it is less the formal limitations on emergency rule that contain it than popular resistance to its extension beyond clear emergency conditions.

What preparations have states made for political control in a nuclear emergency? It is not possible to provide a comprehensive answer since much of the relevant information is kept secret. But the available evidence shows a variety of degrees and methods of preparation.

Sweden and Switzerland have made the most comprehensive preparations for survival of both the population and the state. Civil defense systems in these two countries are extensive, with the capability of protecting most of the population from fallout, if not direct attack. In Switzerland, the bulk of the armed forces comes from the militia rather than a standing army. In Sweden, a strong conventional military system is supplemented by protection and dispersal of economic production, psychological preparation of the population, and some training in civilian resistance to aggression. In both these countries these preparations are largely supported by the population.[15]

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British government preparations for nuclear war provide a strong contrast. British civil defense plans provide little protection for the population but include numerous citadels and shelters to ensure the survival of government functions. The basic thrust of planning seems to be to maintain government control *over* the population rather than maximum survival or protection. For example, simulations organized to train civil defense personnel and postwar executives are often aimed more at internal dissent than at "enemy" attackers. The mentality of the officials who would be in control of martial law in the event of a nuclear crisis is shown by their characterization of "pacifism" as a cover for subversion.

These plans would be virtually unknown if it were not for the efforts of a few meticulous investigators like Peter Laurie and Duncan Campbell.[16] It is not known to what extent similar preparations have been made in other European countries. Campbell mentions that some of them have plans to suppress public dissent and the movement of refugees. In the United States, preparations seem to be less developed, though the Federal Emergency Management Agency seems to have been making a bid for increased power both in executive rule in emergencies and in current "counterterrorism."[17]

The Australian government, by contrast, seems to have made almost no preparations for a nuclear crisis or the aftermath of nuclear war. The Australian Defence Department has carried out no substantial studies of the effect of nuclear war on Australia, and there is no active civil defense program. The *War Book*, a government guide for official action in the event of war, has not been updated since the 1950s.[18]

The different degrees and types of preparations by governments for their own survival and the survival of their populations grow out of their own political and institutional histories, including the degree of government centralization and secrecy, the interactive dynamics of government bureaucracies, relationships with nuclear weapons states, and the saliency of nuclear threats. These issues are not my main concern here. Rather, the point is that post-nuclear war planning has been carried out by some governments, and in some cases a key focus in this planning is more on maintaining internal political control than defending against external enemies or protecting the population.

Responses

If we examine earlier experiences of war dictatorship, an intriguing question arises: What is it that prevents the continuation of the dictatorship after the removal of the justifying emergency, namely the war? In a state of martial law the executive has ultimate power over both the political and economic system, and the police and military are the agents of the executive to enforce its will, by force if necessary. Certainly there is no countervailing force backed by violence that could terminate these dictatorships in countries such as Britain, France, and the United States.

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The liberal answer to this question seems to be that respect for constitutional requirements by the executive prevents the extension of the dictatorship.[19] But even for liberals the problem is a difficult one. Lasswell, in an essay on balancing the need to prevent aggression from "totalitarian dictatorships" against the need to protect freedoms endangered by rise of a police state in the United States, argued that vigilance to protect freedoms was needed from the executive, Congress, the courts, and the public.[20]

A close look at the termination of executive powers after wars gives a better picture of what actually happens. In some cases a voluntary termination of the powers does occur, but the driving force in other cases is widespread public refusal to accept continuation of repressive executive power. For example, British prime minister Lloyd George continued with the administrative innovation of the war cabinet for some time after the end of World War I, but finally was induced to give it up in October 1919 in the face of public criticism. After the end of World War II, demands by soldiers from Allied countries to come home were so insistent that Western governments could not ignore them. Remobilization became possible only after the Soviet Union had been turned from an ally into an enemy in the eyes of the public. This sort of popular opposition to government emergency powers can occur during wartime as well. In both Britain and France at the beginning of World War I, plans were made for a complete system of military courts to deal with infractions of executive orders. After the immediate threat of German victory receded, popular pressure (given expression, for example, in the legislature) against the harshness and abuses of these courts resulted in a significant reduction in their powers.[21]

These experiences of the moderation or elimination of wartime dictatorial powers by popular opposition can be seen as examples of the power of nonviolent action.[22] Nonviolent action includes actions such as demonstrations, fraternization, social ostracism, strikes, work-to-rule, boycotts, sit-ins and parallel government, among a host of other actions. There are many historical examples in which nonviolent action has been the main force bringing down repressive regimes, including in recent years the Greek, Iranian, Argentine, and Philippine governments. Although the Ebert government invoked Article 48 against left-wing threats to the Weimar Republic, it could not rely on its own military to oppose the right-wing Kapp putsch in 1920. Instead, the German population spontaneously used mass nonviolent action to topple Kapp and restore the republic.[23]

Liberal democratic political theory, with its focus on representative institutions in a pluralist and constitutional system, has not been very useful in understanding these events, which involve mass action and non-cooperation to undermine the loyalty of troops and functionaries to the political and military elites. Marxist theory has not had a lot to say either, because such mass action does not result in any significant change in the organization of production, in many cases, the class composition or orientation of rulers.

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As an organized counterweight to war dictatorship, perhaps most promising is social defense, also called civilian defense, civilian-based defense, and nonviolent defense.[24] Social defense is nonviolent resistance to aggression as an alternative to military defense, using methods such as strikes, boycotts, noncooperation, demonstrations, and setting up alternative institutions. No society has yet adopted social defense, but some examples of the spontaneous use of nonviolent methods give a suggestion of its possibilities, such as the Czechoslovak resistance to the Soviet invasion of 1968 and the toppling of the dictatorship in Guatemala in 1944. Social defense relies on community solidarity and widespread participation, and by its nature is suited for opposing state military power. Preparations for social defense against an external enemy would serve as well for opposing state or military repression in the event of nuclear crisis or war.

Economic organization plays a large role in social defense. Many of the methods of nonviolent resistance are economic in nature, such as strikes, boycotts, and work-ins. Factories and other economic resources can be designed so that they can be shut down or redirected to resist use by an aggressor. For example, large-scale machinery can be designed with key components, hard to duplicate, whose easy removal or destruction halts its operation. Replacements could be kept in a safe place, perhaps even another country, so that even torture of workers would not restore production.

Whatever the advantages of social defense as a defense system by itself or as a backup to military defense, or in preventing the excesses of war dictatorship, it has not been enthusiastically received by governments. Only a few governments, including Sweden and the Netherlands, have even sponsored serious investigations into the option. This is not surprising: Most governments are loath to sponsor any initiative that might be used to undermine their own powers.

Although the existence of nuclear weapons has stimulated vast amounts of political theorizing, hardly anything has been done concerning the political consequences of nuclear crisis or nuclear war. In my opinion, the prospect of a nuclear crisis serious enough to cause severe political repression is real enough to warrant some political preparation as an insurance policy. The goal should be to make this preparation of a type that also reduces the risk of nuclear war in the first place.[25]

NOTES

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11. Rossiter, *Constitutional Dictatorship,* 173.
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Marxist and Austrian Class Analysis

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I want to do the following in this paper: First to present the theses that constitute the hard core of the Marxist theory of history. I claim that all of them are essentially correct. Then I will show how these true theses are derived in Marxism from a false starting point. Finally, I will demonstrate how Austrianism in the Mises-Rothbard tradition can give a correct but categorically different explanation of their validity.

Let me begin with the hard core of the Marxist belief system:[1]

(1) "The history of mankind is the history of class struggles."[2] It is the history of struggles between a relatively small ruling class and a larger class of the exploited. The primary form of exploitation is economic: The ruling class expropriates part of the productive output of the exploited or, as Marxists say, "it appropriates a social surplus product" and uses it for its own consumptive purposes.

(2) The ruling class is unified by its common interest in upholding its exploitative position and maximizing its exploitatively appropriated surplus product. It never deliberately gives up power or exploitation income. Instead, any loss in power or income must be wrestled away from it through struggles, whose outcome ultimately depends on the class consciousness of the exploited, i.e., on whether or not and to what extent the exploited are aware of their own status and are consciously united with other class members in common opposition to exploitation.

(3) Class rule manifests itself primarily in specific arrangements regarding the assignment of property rights or, in Marxist terminology, in specific "relations of production." In order to protect these arrangements or production relations, the ruling class forms and is in command of the state as the apparatus of compulsion and coercion. The state enforces and helps reproduce a given class structure through the administration of a system of "class justice," and it assists in the creation and the support of an ideological superstructure designed to lend legitimacy to the existence of class rule.

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(4) Internally, the process of competition within the ruling class generates a tendency toward increasing concentration and centralization. A multipolar system of exploitation is gradually supplanted by an oligarchic or monopolistic one. Fewer and fewer exploitation centers remain in operation, and those that do are increasingly integrated into a hierarchical order. And externally, e.g., within the international system, this internal centralization process will (the more intensively the more advanced it is) lead to imperialist interstate wars and the territorial expansion of exploitative rule.

(5) Finally, with the centralization and expansion of exploitative rule gradually approaching its ultimate limit of world domination, class rule will increasingly become incompatible with the further development and improvement of "productive forces." Economic stagnation and crises become more and more characteristic and create the "objective conditions" for the emergence of a revolutionary class consciousness of the exploited. The situation becomes ripe for the establishment of a classless coeity, the "withering away of the state," "the replacement of government of men over men by the administration of things,"[3] and, as a result, unheard of economic prosperity.

All of these theses are perfectly justifiable, as I will show. Unfortunately, however, it is Marxism, which subscribes to all of them, that has done more than any other ideological system to discredit their validity by deriving them from a patently absurd theory of exploitation.

What is this Marxist theory of exploitation? According to Marx, such precapitalist social systems as slavery and feudalism are characterized by exploitation. There is no quarrel with this. After all, the slave is not a free laborer, and he cannot be said to gain from his being enslaved. Rather, his enslavement reduces his utility at the expense of an increase in wealth appropriated by the slave master. The interest of the slave and that of the slave owner are indeed antagonistic. The same is true of the interests of the feudal lord who extracts a land rent from a peasant who works on homesteaded land. The lord's gains are the peasant's losses. And it is also undisputed that slavery as well as feudalism hamper the development of productive forces. Neither slave nor serf will be as productive as he would be without slavery or serfdom.

But the genuinely new Marxist idea is that essentially nothing is changed as regards exploitation under capitalism, i.e., if the slave becomes a free laborer, or if the peasant decides to farm land homesteaded by someone else and pays rent in exchange for doing so. To be sure, Marx, in the famous twenty-fourth chapter of the first volume of his *Kapital,* titled "The So-called Original Accumulation," gives a historical account of the emergence of capitalism that makes the point that much or even most of the initial capitalist property is the result of plunder, enclosure, and conquest. Similarly, in chapter 25, on the "Modern Theory of Colonialism," the role of force and violence in exporting capitalism to the—as we would now say—Third World is heavily emphasized. Admittedly,

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all this is generally correct, and insofar as it is there can be no quarrel with labeling such capitalism exploitative. Yet one should be aware of the fact that here Marx is performing a trick. In engaging in historical investigations and arousing the reader's indignation at the brutalities underlying the formation of many capitalist fortunes, he actually sidesteps the issue at hand, evading the fact that his thesis is really an entirely different one: namely, that even under "clean" capitalism, so to speak, i.e., a system in which the original appropriation of capital was the result of nothing else but homesteading, work, and savings, the capitalist who hired labor to be employed with this capital would nonetheless be engaged in exploitation. Indeed, Marx considered the proof of this thesis his most important contribution to economic analysis.

His proof of the exploitative character of a clean capitalism consists in the observation that the factor prices, in particular the wages paid to laborers by the capitalist, are lower than the output prices. The laborer, for instance, is paid a wage that represents consumption goods that can be produced in three days, but he actually works five days for his wage and produces an output of consumption goods that exceeds what he receives as remuneration. The output of the two extra days, the surplus value in Marxist terminology, is appropriated by the capitalist. Hence, according to Marx, there is exploitation.[4]

What is wrong with this analysis?[5] The answer becomes obvious once it is asked why the laborer would possibly agree to such an arrangement! He agrees because his wage payment represents present goods—while his own labor services represent only future goods—and he values present goods more highly. After all, he could also decide not to sell his labor services to the capitalist and then reap the "full value" of his output himself. But this would of course imply that he would have to wait longer for any consumption goods to become available to him. In selling his labor services he demonstrates that he prefers a smaller amount of consumption goods now over a possibly larger one at some future date. On the other hand, why would the capitalist want to strike a deal with the laborer? Why would he want to advance present goods (money) to the laborer in exchange for services that bear fruit only later? Obviously, he would not want to pay out, for instance, $100 now if he were to receive the same amount in one year's time. In that case, why not simply hold on to it for one year and receive the extra benefit of having actual command over it during the entire time? Instead, he must expect to receive a larger sum than $100 in the future in order to give up $100 now in the form of wages paid to the laborer. He must expect to be able to earn a profit, or more correctly an interest return. And he is constrained by time preference, i.e., the fact that an actor invariably prefers earlier over later goods, in yet another way. For if one can obtain a larger sum in the future by sacrificing a smaller one in the present, why then is the capitalist not engaged in more saving than he actually is? Why does he not hire more laborers than he does, if each one of them promises an additional interest return? The answer again should be

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obvious: because the capitalist is a consumer, too, and cannot help being one. The amount of his savings and investing is restricted by the necessity that he, too, like the laborer, requires a supply of present goods "large enough to secure the satisfaction of all those wants the satisfaction of which during the waiting time is considered more urgent than the advantages which a still greater lengthening of the period of production would provide."[6]

What is wrong with Marx' theory of exploitation, then, is that he does not understand the phenomenon of time preference as a universal category of human action.[7] That the laborer does not receive his "full worth" has nothing to do with exploitation but merely reflects the fact that it is impossible for man to exchange future goods against present ones except at a discount. Unlike the case of slave and slave master, where the latter benefits at the expense of the former, the relationship between the free laborer and the capitalist is a mutually beneficial one. The laborer enters the agreement because, given his time preference, he prefers a smaller amount of present goods over a larger future one; and the capitalist enters it because, given his time preference, he has a reverse preference order and ranks a larger future amount of goods more highly than a smaller present one. Their interests are not antagonistic but harmonious. Without the capitalist's expectation of an interest return, the laborer would be worse off because he would have to wait longer than he wishes to wait; and without the laborer's preference for present goods the capitalist would be worse off because he would have to resort to less roundabout and less efficient production methods than those he desires to adopt. Nor can the capitalist wage system be regarded as an impediment to the further development of the forces of production, as Marx claims. If the laborer were not permitted to sell his labor services and the capitalist to buy them, output would not be higher but lower because production would have to take place with relatively reduced levels of capital accumulation.

Under a system of socialized production, quite contrary to Marx's proclamations, the development of productive forces would not reach new heights but would instead sink dramatically.[8] For obviously, capital accumulation must be brought about by definite individuals at definite points in time and space through homesteading, producing, and/or saving. In each case it is brought about with the expectation that it will lead to an increase in the output of future goods. The value an actor attaches to his capital reflects the value he attaches to all expected future incomes attributable to its cooperation and discounted by his rate of time preference. If, as in the case of collectively owned factors of production, an actor is no longer granted exclusive control over his accumulated capital and hence over the future income to be derived from its employment, but partial control instead is assigned to non-homesteaders, non-producers, and non-savers, the value for him of the expected income and hence that of the capital goods is reduced. His effective rate of time preference will rise. There will be less homesteading of resources whose scarcity is recognized and less saving for the maintenance

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of existing and the production of new capital goods. The period of production, the roundaboutness of the production structure, will be shortened, and relative impoverishment will result.

If Marx's theory of capitalist exploitation and his ideas on how to end exploitation and establish universal prosperity are false to the point of being ridiculous, it is clear that any theory of history that can be derived from it must be false, too. Or if it should be correct, it must have been derived incorrectly. Instead of going through the lengthy task of explaining all of the flaws in the Marxist argument as it sets out from its theory of capitalist exploitation and ends with the theory of history that I described earlier, I will take a shortcut. I will now outline in the briefest possible way the correct—Austrian, Misesian-Rothbardian—theory of exploitation; give an explanatory sketch of how this theory makes sense out of the class theory of history; and highlight along the way some key differences between this class theory and the Marxist one and also point out some intellectual affinities between Austrianism and Marxism stemming from their common conviction that there does indeed exist something like exploitation and a ruling class.[9]

The starting point for the Austrian exploitation theory is plain and simple, as it should be. Actually, it has already been established through the analysis of the Marxist theory: Exploitation characterized the relationship between slave and slave master and serf and feudal lord. But no exploitation was found possible under a clean capitalism. What is the principle difference between these two cases? The answer is: the recognition or non-recognition of the homesteading principle. The peasant under feudalism is exploited because he does not have exclusive control over land that he homesteaded, and the slave because he has no exclusive control over his own homesteaded body. If, on the other hand, everyone has exclusive control over his own body (is a free laborer, that is) and acts in accordance with the homesteading principle, there can be no exploitation. It is logically absurd to claim that a person who homesteads goods not previously homesteaded by anybody else, or who employs such goods in the production of future goods, or who saves presently homesteaded or produced goods in order to increase the future supply of goods, could thereby exploit anybody. Nothing has been taken away from anybody in this process, and additional goods have actually been created. And it would be equally absurd to claim that an agreement between different homesteaders, savers, and producers regarding their non-exploitatively appropriated goods or services could possibly contain any foul play. Instead, exploitation takes place whenever any *deviation* from the homesteading principle occurs. Exploitation occurs whenever a person successfully claims partial or full control over scarce resources he has not homesteaded, saved, or produced, and which he has not acquired contractually from a previous producer-owner. Exploitation is the expropriation of homesteaders, producers, and savers by late-coming non-homesteaders, non-producers, non-savers, and non-contractors; it is the expropria-

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tion of people whose property claims are grounded in work and contract by people whose claims are derived from thin air and who disregard others' work and contracts.[10]

Needless to say, exploitation thus defined is in fact an integral part of human history. One can acquire and increase wealth either through homesteading, producing, saving, or contracting, or by expropriating homesteaders, producers, savers, or contractors. There are no other ways. Both methods are natural to mankind. Alongside homesteading, producing, and contracting, there have always been non-productive and non-contractual property acquisitions. And in the course of economic development, just as producers and contractors can form firms, enterprises, and corporations, so can exploiters create large-scale exploitation enterprises, governments, and states. The ruling class (which may again be internally stratified) is initially composed of the members of such an exploitation firm. And with a ruling class established over a given territory and engaged in the expropriation of economic resources from a class of exploited producers, the center of all history indeed becomes the struggle between exploiters and the exploited. History, then, correctly told, is essentially the history of the victories and defeats of the rulers in their attempt to maximize exploitatively appropriated income and of the ruled in their attempts to resist and reverse this tendency. It is in this assessment of history that Austrians and Marxists agree and why a notable intellectual affinity between Austrian and Marxist historical investigations exists. Both oppose a historiography that recognizes only action or interaction, economically and morally on a par; and both oppose a historiography that instead of adopting such a value-neutral stand thinks that one's own arbitrarily introduced subjective value judgments have to provide the foil for one's historical narratives. Rather, history must be told in terms of freedom and exploitation, parasitism and economic impoverishment, private property and its destruction—otherwise it is told falsely.[11]

While productive enterprises come or go because of voluntary support or its absence, a ruling class never comes to power because there is a demand for it, nor does it abdicate when abdication is demonstrably demanded. One cannot say by any stretch of the imagination that homesteaders, producers, savers, and contractors have demanded their own expropriation. They must be coerced into accepting it, and this proves conclusively that the exploiting firm is not in demand at all. Nor can one say that a ruling class can be brought down by abstaining from transactions with it in the same way as one can bring down a productive enterprise. For the ruling class acquires its income through non-productive and non-contractual transactions and thus is unaffected by boycotts. Rather, what makes the rise of an exploitation firm possible, and what alone can in turn bring it down, is a specific state of public opinion or, in Marxist terminology, a specific state of class consciousness.

An exploiter creates victims, and victims are potential enemies. It is possible that this resistance can be lastingly broken down by force, as, for example, in

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the case of a group of men exploiting another group of roughly the same size. However, more than force is needed to expand exploitation over a population many times its own size. For this to happen, a firm must also have public support. A majority of the population must accept the exploitative actions as legitimate. This acceptance can range from active enthusiasm to passive resignation. But it must be acceptance in the sense that a majority must have given up the idea of actively or passively resisting any attempt to enforce non-productive and non-contractual property acquisitions. The class consciousness must be low, undeveloped, and vague. Only as long as this state of affairs lasts is there still room for an exploitative firm to prosper, even if no actual demand for it exists. Only if and insofar as the exploited and expropriated develop a clear idea of their own situation and are united with other members of their class through an ideological movement that gives expression to the idea of a classless society where all exploitation is abolished, can the power of the ruling class be broken. Only if and insofar as a majority of the exploited public becomes consciously integrated into such a movement and accordingly displays a common outrage over all non-productive or non-contractual property acquisitions, shows a common contempt for everyone who engages in such acts, and deliberately contributes nothing to help make them successful (not to mention actively trying to obstruct them), can its power be brought to crumble.

The gradual abolition of feudal and absolutist rule and the rise of increasingly capitalist societies in Western Europe and the United States—accompanied by unheard of economic growth and increasing population—was the result of a growing class consciousness among the exploited, who were ideologically molded together through the doctrines of natural rights and liberalism. In this Austrians and Marxists agree.[12] They disagree, however, as to whether the reversal of this liberalization process and the steadily increased levels of exploitation in these societies since the last third of the nineteenth century, and particularly pronounced since World War I, are the result of a loss in class consciousness. In fact, in the Austrian view Marxism must accept much of the blame for this development by misdirecting attention from the correct exploitation model of the homesteader-producer-saver-contractor versus the non-homesteader-producer-saver-contractor to the fallacious model of the wage earner versus the capitalist, thus muddling things up.[13]

The establishment of a ruling class over an exploited one many times its size by coercion and the manipulation of public opinion, i.e., a low degree of class consciousness among the exploited, finds its most basic institutional expression in the creation of a system of public law superimposed on private law. The ruling class sets itself apart and protects its position as a ruling class by adopting a constitution for their firm's operations. On the one hand, by formalizing the internal operations within the state apparatus as well as its relations with the exploited population, a constitution creates some degree of legal stability. The more familiar

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and popular private law notions are incorporated into constitutional and public law, the more favorably disposed will be the public to the existence of the state. On the other hand, any constitution and public law also formalizes the immune status of the ruling class as regards the homesteading principle. It formalizes the right of the state's representatives to engage in non-productive and non-contractual property acquisitions and the ultimate subordination of private to public law. Class justice, i.e., one set of laws for the rulers and another for the ruled, comes to bear in this dualism of public and private law and in the domination and infiltration of public law over and into private law. It is not because private property rights are recognized by law, as Marxists think, that class justice is established. Rather, class justice comes into being precisely whenever a legal distinction exists between a class of persons acting under and being protected by public law and another class acting under and being protected instead by some subordinate private law. More specifically then, the basic proposition of the Marxist theory of the state in particular is false. The state is not exploitative because it protects the capitalists' property rights, but because it itself is exempt from the restriction of having to acquire property productively and contractually.[14]

In spite of this fundamental misconception, however, Marxism, because it correctly interprets the state as exploitative (unlike, for example, the public choice school, which sees it as normal firm among others),[15] is on to some important insights regarding the logic of state operations. For one thing, it recognizes the strategic function of redistributionist state policies. As an exploitative firm, the state must at all times be interested in a low degree of class consciousness among the ruled. The redistribution of property and income is the state's means by which it can create divisiveness among the public and destroy the formation of a unifying class consciousness among the exploited. Furthermore, the redistribution of state power itself through democratizing the state constitution and opening up every ruling position to everyone and granting everyone the right to participate in the determination of state personnel and policy is actually a means for reducing the resistance against exploitation as such. Secondly, the state is indeed, as Marxists see it, the great center of ideological propaganda and mystification: Exploitation is really freedom; taxes are really voluntary contributions; non-contractual relations are really "conceptually" contractual ones; no one is ruled by anyone but we all rule ourselves; without the state neither law nor security would exist; and the poor would perish, etc. All of this is part of the ideological superstructure designed to legitimize an underlying basis of economic exploitation.[16] And finally, Marxists are also correct in noticing the close association between the state and business, especially the banking elite—even though their explanation for it is faulty. The reason is not that the bourgeois establishment sees and supports the state as the guarantor of private property rights and contractualism. On the contrary, the establishment correctly perceives the state as the very antithesis to private property that it is and takes a close interest in it

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for this reason. The more successful a business, the larger the potential danger of governmental exploitation, but the larger also the potential gains that can be achieved if it can come under government's special protection and is exempt from the full weight of capitalist competition. This is why the business establishment is interested in the state and its infiltration. The ruling elite in turn is interested in close cooperation with the business establishment because of its financial powers. In particular, the banking elite is of interest because as an exploitative firm the state naturally wishes to possess complete autonomy for counterfeiting. By offering to cut the banking elite in on its own counterfeiting machinations and allowing them to counterfeit in addition to its own counterfeited notes under a regime of fractional reserve banking, the state can easily reach this goal and establish a system of state monopolized money and cartelized banking controlled by the central bank. And through this direct counterfeiting connection with the banking system and by extension the banks' major clients, the ruling class in fact extends far beyond the state apparatus to the very nerve centers of civil society—not that much different, at least in appearance, from the picture that Marxists like to paint of the cooperation between banking, business elites, and the state.[17]

Competition within the ruling class and among different ruling classes brings about a tendency toward increasing concentration. Marxism is right in this. However, its faulty theory of exploitation again leads it to locate the cause for this tendency in the wrong place. Marxism sees such a tendency as inherent in capitalist competition. Yet it is precisely so long as people are engaged in a clean capitalism that competition is *not* a form of zero-sum interaction. The homesteader, the producer, saver, and contractor do not gain at another's expense. Their gains either leave another's physical possessions completely unaffected or they actually imply mutual gains (as in the case of all contractual exchanges). Capitalism thus can account for increases in absolute wealth. But under its regime no systematic tendency toward relative concentration can be said to exist.[18] Instead, zero-sum interactions characterize not only the relationship between the ruler and the ruled, but also between competing rulers. Exploitation defined as non-productive and non-contractual property acquisitions is only possible as long as there is anything that can be appropriated. Yet if there were free competition in the business of exploitation, there would obviously be nothing left to expropriate. Thus exploitation requires monopoly over some given territory and population; and the competition between exploiters is by its very nature eliminative and must bring about a tendency toward relative concentration of exploitative firms as well as a tendency toward centralization within each exploitative firm. The development of *states* rather than capitalist firms provides the foremost illustration of this tendency: There are now a significantly smaller number of states with exploitative control over much larger territories than in previous centuries. And within each state apparatus there has in fact been a constant tendency toward increasing the powers of the central government at the expense of its regional and local subdivisions.

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Yet outside the state appartus a tendency toward relative concentration has also become apparent for the same reason—not, as should be clear by now, because of any trait inherent in capitalism, but because the ruling class has expanded its rule into civil society through the creation of a state-banking-business alliance and, in particular, the establishment of a system of central banking. If a concentration and centralization of state power then takes place, it is only natural that this be accompanied by a parallel process of relative concentration and cartelization of banking and industry. Along with increased state powers, the associated banking and business establishment's powers of eliminating or putting economic competitors at a disadvantage by means of non-productive and/or non-contractual expropriations increase. Business concentration is the reflection of a "statization" of economic life.[19]

The primary means for the expansion of state power and the elimination of rival exploitation centers is war and military domination. Interstate competition implies a tendency toward war and imperialism. As centers of exploitation, their interests are by nature antagonistic. Moreover, with each of them—internally—in command of the instrument of taxation and absolute counterfeiting powers, it is possible for the ruling classes to let others pay for their wars. Naturally, if one does not have to pay for one's risky ventures oneself, but can force others to do so, one tends to be a greater risk taker and more trigger-happy than one might otherwise be.[20] Marxism, contrary to much of the so-called bourgeois social sciences, gets the facts right: There is indeed a tendency toward imperialism operative in history; and the foremost imperialist powers are indeed the most advanced capitalist nations. Yet the explanation is once again faulty. It is the *state* as an institution exempt from the capitalist rules of property acquisitions that is by nature aggressive. And the historical evidence of a close correlation between capitalism and imperialism only seemingly contradicts this. It finds its explanation, easily enough, in the fact that in order to come out successfully from interstate wars, a state must be in command of sufficient (in relative terms) economic resources. Other things being equal, the state with more ample resources will win. As an exploitative firm, a state is by nature destructive of wealth and capital accumulation. Wealth is produced exclusively by civil society; and the weaker the state's exploitative powers, the more wealth and capital society accumulates. Thus, paradoxical as it may sound at first, the weaker or the more liberal a state is internally, the further developed capitalism is; a developed capitalist economy to extract from makes the state richer; and a richer state then makes for more and more successful expansionist wars. It is this relationship that explains why initially the states of Western Europe, and in particular Great Britain, were the leading imperialist powers, and why in the twentieth century this role has been assumed by the United States.

And a similarly straightforward yet once again entirely non-Marxist explanation exists for the frequent Marxist observation that the banking and business

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establishment is usually among the most ardent supporters of military strength and imperial expansionism. This support does not occur because the expansion of capitalist markets requires exploitation, but because the expansion of state-protected and privileged business requires that such protection be extended also to foreign countries and that foreign competitors be hampered through non-contractual and non-productive property acquisitions in the same way or more so than internal competition. Specifically, the establishment supports imperialism if this support promises to lead to a position of military domination of one's own allied state over another. For then, from a position of military strength, it becomes possible to establish a system of what one may call monetary imperialism. The dominating state will use its superior power to enforce a policy of internationally coordinated inflation. Its own central bank sets the pace in the process of counterfeiting, and the central banks of the dominated states are ordered to use its currency as their own reserves and inflate on top of them. Thus, along with the dominating state and as the earliest receivers of the counterfeit reserve currency, its associated banking and business establishment can engage in an almost costless expropriation of foreign property owners and income producers. A double layer of exploitation of a foreign state and a foreign elite on top of a national state and elite is imposed on the exploited class in the dominated territories, causing prolonged economic dependency on and relative economic stagnation in comparison with the dominant nation. It is this—very uncapitalist—situation that characterizes the status of the United States and the U.S. dollar and that gives rise to the—correct—accusations concerning U.S. economic exploitation and dollar imperialism.[21]

Finally, the increasing concentration and centralization of exploitative powers leads to economic stagnation and thereby creates the objective conditions for the ultimate demise of these powers and the establishment of a classless society capable of producing unheard of economic prosperity.

Contrary to Marxist claims, this society will not be the result of any historical laws. In fact, no such things as inexorable historical laws as Marxists conceive of them exist.[22] Nor will it be the result of a tendency for the rate of profit to fall with an increased organic composition of capital (an increase in the proportion of constant to variable capital, that is), as Marx thought. Just as the labor theory of value is false beyond repair, so is the law of the tendency of the profit rate to fall, which is based on it. The source of value, interest, and profit is not exclusively the expenditure of labor, but much more general: acting, i.e., the employment of scarce means in the pursuit of goals by agents who are constrained by time preference and uncertainty (imperfect knowledge). There is no reason to suppose, then, that changes in the organic composition of capital should have any systematic relation to changes in interest and profit.

Instead, the likelihood of crises that stimulate the development of a higher degree of class consciousness (i.e., the subjective conditions for the overthrow of the

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ruling class) increases because—to use one of Marx' favorite terms—of the "dialectics" of exploitation that I have already touched on earlier: Exploitation is destructive of wealth formation. Hence, in the competition of exploitative firms, i.e., of states, less exploitative or more liberal ones tend to outcompete more exploitative ones because they are in command of more ample resources. The process of imperialism initially has a relatively liberating effect on societies coming under its control. A relatively more capitalist social model is exported to relatively less capitalist (more exploitative) societies. The development of productive forces is stimulated; economic integration is furthered, division of labor extended, and a genuine world market established. Population figures go up in response, and expectations about the economic future rise to unprecedented heights.[23] With exploitative domination taking hold, and interstate competition reduced or even eliminated in a process of imperialist expansionism, however, the external constraints on the dominating state's power of internal exploitation and expropriation gradually disappear. Internal exploitation, taxation, and regulation begin to increase the closer the ruling class comes to its ultimate goal of world domination. Economic stagnation sets in and the—worldwide—higher expectations become frustrated. And this—high expectations and an economic reality increasingly falling behind these expectations—is the classical situation for the emergence of a revolutionary potential.[24] A desperate need for ideological solutions to the emerging crises arises, along with a more widespread recogition of the fact that state rule, taxation, and regulation—far from offering such a solution—actually constitute the very problem that must be overcome. If in this situation of economic stagnation, crises, and ideological disillusion[25] a positive solution is offered in the form of a systematic and comprehensive libertarian philosophy coupled with its economic counterpart, Austrian economics, and if this ideology is propagated by an activist movement, then the prospects of igniting the revolutionary potential to activism become overwhelmingly positive and promising. Anti-statist pressures will mount and bring about an irresistible tendency toward dismantling the power of the ruling class and the state as its instrument of exploitation.[26]

If and insofar as this occurs, however, it will not mean—contrary to the Marxist model—social ownership of means of production. In fact, social ownership is not only economically inefficient, as has already been explained, but incompatible with the idea that the state is "withering away."[27] For if means of production are owned collectively, and if it is realistically assumed that not everyone's ideas as to how to employ these means in production happen to coincide (as if by miracle), then it is precisely socially owned factors of production that require continued state actions, i.e., an institution coercively imposing one person's will on another's. Instead, the withering away of the state, and with this the end of exploitation and the beginning of liberty and unheard of economic prosperity, means the establishment of a pure private property society regulated by nothing but private law.

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NOTES

1. See on the following K. Marx and F. Engels, *The Communist Manifesto* (1848); K. Marx, *Das Kapital,* 3 vols. (1867; 1885; 1894); as contemporary Marxists, E. Mandel, *Marxist Economic Theory* (London: Merlin, 1962); idem, *Late Capitalism* (London: New Left Books, 1975); P. Baran and P. Sweezy, *Monopoly Capital* (New York: Monthly Review Press, 1966); from a non-Marxist perspective, L. Kolakowski, *Main Currents of Marxism,* G. Wetter, *Sovietideologie heute* (Frankfurt/M.: Fischer, 1962), vol. 1; W. Leonhard, *Sovietideologie heute* (Frankfurt/M.: Fischer, 1962), vol. 2.
2. *The Communist Manifesto,* section 1.
3. *The Communist Manifesto,* section 2, last 2 paragraphs; F. Engels, *Von der Autoritaet* in Marx and Engels, *Ausgewaehlte Schriften,* 2 vols. (East Berlin: Dietz, 1953), vol. 1, p. 606; idem, *Die Entwicklung des Sozialismus von der Utopie zur Wissenschaft, ibid.* vol. 2, p. 139.
4. See K. Marx, *Das Kapital,* vol. 1; the shortest presentation is his *Lohn, Preis, Profit* (1865). Actually, in order to prove the more specific Marxist thesis that exclusively the owner of labor services is exploited (but not the owner of the other originary factor of production: land), yet another argument would be needed. For if it were true that the discrepancy between factor and output prices constitutes an exploitative relation, this would only show that the capitalist who rents labor services from an owner of labor, and land services from an owner of land, would exploit either labor, or land, or labor and land simultaneously. It is the labor theory of value, of course, which is supposed to provide the missing link here by trying to establish labor as the sole source of value. I will spare myself the task of refuting this theory. Few enough remain today, even among those claiming to be Marxists, who do not recognize the faultiness of the labor theory of value. Rather, I will accept for the sake of argument the suggestion made, for instance, by the self-proclaimed "analytical Marxist" J. Roemer in *A General Theory of Exploitation and Class* (Cambridge: Harvard University Press, 1982); and *Value, Exploitation and Class* (London: Harwood Academic Publishers, 1985), that the theory of exploitation can be separated analytically from the labor theory of value; and that a "generalized commodity exploitation theory" can be formulated which can be justified regardless of whether or not the labor theory of value is true. I want to demonstrate that the Marxist theory of exploitation is nonsensical even if one were to absolve its proponents from having to prove the labor theory of value and, indeed, even if the labor theory of value were true. Even a generalized commodity exploitation theory provides no escape from the conclusion that the Marxist theory of exploitation is dead wrong.
5. See on the following E. v. Boehm-Bawerk, *The Exploitation Theory of Socialism-Communism* (South Holland: Libertarian Press, 1962).
6. L. v. Mises, *Human Action* (Chicago: Regnery, 1966), p. 407; see also M. N. Rothbard, *Man, Economy and State* (Los Angeles: Nash, 1970), pp. 300–01.
7. See on the time preference theory of interest in addition to the works cited in notes 5 and 6 also F. Fetter, *Capital, Interest and Rent* (Kansas City: Sheed Andrews and McMeel, 1977).
8. See on the following H. H. Hoppe, *Theory of Socialism and Capitalism* (Boston: Kluwer, 1988); idem, "Why Socialist Must Fail," *Free Market,* July 1988; idem, "The Economics and Sociology of Taxation," in *Taxation: An Austrian View,* edited by Lew Rockwell (Auburn: Mises Institute, 1990). Forthcoming.
9. Mises' contributions to the theory of exploitation and class are unsystematic. However, throughout his writings he presents sociological and historical interpretations that are class analyses, if only implicitly. Noteworthy here is in particular his acute analysis of the collaboration between government and banking elite in destroying the gold standard in order to increase their inflationary powers as a means of fraudulent, exploitative income and wealth redistribution in their own favor. See for instance his *Monetary Stabilization and Cyclical Policy (1928)* in idem, *On the Manipulation of Money and Credit,* edited by B. Greaves (Dobbs Ferry: Free Market Books, 1978); see also his *Socialism* (Indianapolis: Liberty Fund, 1981), ch. 20; *The Clash of Group Interests and Other Essays,* Occasional Paper no. 7 (New York: Center for Libertarian Studies, 1978). Yet Mises does not give systematic status to class analysis and exploitation theory because he ultimately misconceives of exploitation as merely an intellectual error which correct economic reasoning can dispel. He fails to fully recognize that exploitation is also and probably even more

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so a moral-motivational problem that exists regardless of all economic reasoning. Rothbard adds this insight to the Misesian structure of Austrian economics and makes the analysis of power and power elites an integral part of economic theory and historical-sociological explanations; and he systematically expands the Austrian case against exploitation to include ethics in addition to economic theory, i.e., a theory of justice next to a theory of efficiency, such that the ruling class can also be attacked as immoral. For Rothbard's theory of power, class and exploitation, see in particular his *Power and Market* (Kansas City: Sheed Andrews and McMeel, 1977); *For a New Liberty* (New York: McMillan, 1978); *The Mystery of Banking* (New York: Richardson and Snyder, 1983); *America's Great Depression* (Kansas City: Sheed and Ward, 1975). On important 19th century forerunners of Austrian class analysis, see L. Liggio, "Charles Dunoyer and French Classical Liberalism," *Journal of Libertarian Studies* 1, no. 3, 1977; R. Raico, "Classical Liberal Exploitation Theory," ibid.; M. Weinburg, "The Social Analysis of Three Early 19th Century French Liberals: Say, Comte, and Dunoyer," *Journal of Libertarian Studies* 2, no. 1, 1978; J. T. Salerno, "Comment on the French Liberal School," ibid.; D. M. Hart, "Gustave de Molinari and the Anti-Statist Liberal Tradition," 2 parts, *Journal of Libertarian Studies* 5, nos. 3 and 4, 1981.

10. See on this also H. H. Hoppe, *Theory of Socialism and Capitalism;* idem "The Justice of Economic Efficiency," *Austrian Economics Newsletter,* 1, 1988; idem, "The Ultimate Justification of the Private Property Ethics," *Liberty,* September 1988.
11. See on this theme also Lord (John) Acton, *Essays in the History of Liberty* (Indianapolis: Liberty Fund, 1985); F. Oppenheimer, *System der Soziologie, Vol. II: Der Staat* (Stuttgart: G. Fischer, 1964); A. Ruestow, *Freedom and Domination* (Princeton: Princeton University Press, 1986).
12. See on this M. N. Rothbard, "Left and Right: The Prospects for Liberty" in idem, *Egalitarianism as a Revolt Against Nature and Other Essays* (Washington, D.C.: Libertarian Review Press, 1974).
13. All socialist propaganda to the contrary notwithstanding, the falsehood of the Marxist description of capitalists and laborers as antagonistic classes also comes to bear in certain empirical observations: Logically speaking, people can be grouped into classes in infinitely different ways. According to orthodox positivist methodology (which I consider false but am willing to accept here for the sake of argument), that classification system is better which helps us predict better. Yet the classification of people as capitalists or laborers (or as representatives of varying degrees of capitalist- or laborer-ness) is practically useless in predicting what stand a person will take on fundamental political, social and economic issues. Contrary to this, the correct classification of people as tax producers and the regulated vs. tax consumers and the regulators (or as representatives of varying degrees of tax producer- or consumer-ness) is indeed also a powerful predictor. Sociologists have largely overlooked this because of almost universally shared Marxist preconceptions. But everyday experience overwhelmingly corroborates my thesis: Find out whether or not somebody is a public employee (and his rank and salary), and whether or not and to what extent the income and wealth of a person outside the public sector is determined by public sector purchases and/or regulatory actions--people will systematically differ in their response to fundamental political issues depending on whether they are classified as direct or indirect tax consumers, or as tax producers!
14. F. Oppenheimer, *System der Soziologie* vol. 2, pp. 322–23, presents the matter thus: "The basic norm of the state is power. That is, seen from the side of its origin: violence transformed into might. Violence is one of the most powerful forces shaping society, but is not itself a form of social interaction. It must become law in the positive sense of this term, that is, sociologically speaking, it must permit the development of a system of "subjective reciprocity": and this is only possible through a system of self-imposed restrictions on the use of violence and the assumption of certain obligations in exchange for its arrogated rights. In this way violence is turned into might, and a relationship of domination emerges which is accepted not only by the rulers, but under not too severely oppressive circumstances by their subjects as well, as expressing a "just reciprocity". Out of this basic norm secondary and tertiary norms now emerge as implied in it: norms of private law, of inheritance, criminal, obligational and constitutional law, which all bear the mark of the basic norm of power and domination, and which are all designed to influence the structure of the state in such a way as to increase economic exploitation to the maximum level which is compatible with the continuation of legally regulated domination." The insight is fundamental that "law grows out of two essentially different roots . . . :

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on the one hand, out of the law of the association of equals, which can be called a 'natural' right, even if it is no 'natural right', and on the other hand, out of the law of violence transformed into regulated might, the law of unequals."

On the relation between private and public law, see also F. A. Hayek, *Law, Legislation and Liberty* 3 vols. (Chicago: University of Chicago Press, 1973–79), esp. vol. 1, ch. 6 and vol. 2, pp. 85–88.

15. See J. Buchanan and G. Tullock, *The Calculus of Consent* (Ann Arbor: University of Michigan Press, 1965), p. 19.
16. See H. H. Hoppe, *Eigentum, Anarchie und Staat (Opladen: Westdeutscher Verlag, 1987);* idem, *Theory of Socialism and Capitalism.*
17. See H. H. Hoppe, "Banking, Nation States and International Politics," *Review of Austrian Economics* vol. 4, 1989; M. N. Rothbard, *The Mystery of Banking,* chs. 15–16.
18. See on this in particular M. N. Rothbard, *Man, Economy and State,* ch. 10, esp. the section "The Problem of One Big Cartel"; also L. v. Mises, *Socialism,* chs. 22–26.
19. See on this G. Kolko, *The Triumph of Conservatism* (Chicago: Free Press, 1967); J. Weinstein, *The Corporate Ideal in the Liberal State* (Boston: Beacon Press, 1968); R. Radosh and M. N. Rothbard, eds., *A New History of Leviathan (New York: Dutton, 1972);* L. Liggio and J. J. Martin, eds., *Watershed of Empire* (Colorado Springs: Ralph Myles, 1976).
20. On the relationship between state and war see E. Krippendorff, *Staat und Krieg* (Frankfurt/M.: Suhrkamp, 1985); Ch. Tilly, "War Making and State Making as Organized Crime," in P. Evans et al., eds., *Bringing the State Back In* (Cambridge: Cambridge University Press, 1985); also R. Higgs, *Crisis and Leviathan* (New York: Oxford University Press, 1987).
21. On a further elaborated version of this theory of military and monetary imperialism see H. H. Hoppe, "Banking, Nation States and International Politics", *Review of Austrian Economics,* Vol. 4, 1990.
22. See on this in particular L. v. Mises, *Theory and History* (Auburn: Mises Institute, 1985), esp. part 2.
23. It may be noted here that Marx and Engels, foremost in their *Communist Manifesto,* championed the historically progressive character of capitalism and were full of praise for its unprecedented accomplishments. Indeed, reviewing the relevant passages of the Manifesto concludes J. A. Schumpeter, "Never, I repeat, and in particular by no modern defender of the bourgeois civilization has anything like this been penned, never has a brief been composed on behalf of the business class from so profound and so wide a comprehension of what its achievement is and what it means to humanity." "The Communist Manifesto in Sociology and Economics," in *Essays of J. A. Schumpeter* edited by R. V. Clemence (Port Washington, N.Y.: Kennikat Press, 1951), p. 293. Given this view of capitalism, Marx went so far as to defend the British conquest of India, for example, as a historically progressive development. See Marx' contributions to the *New York Daily Tribune* of June 25, 1853, July 11, 1853, August 8, 1853 (Marx and Engels, *Werke,* vol. 9, [East Berlin: Dietz, 1960]). As a contemporary Marxist taking a similar stand on imperialism see B. Warren, *Imperialism: Pioneer of Capitalism* (London: New Left Books, 1981).
24. See on the theory of revolution in particular Charles Tilly, *From Mobilization to Revolution* (Reading, Mass.: Addison-Wesley, 1978); idem, *As Sociology Meets History* (New York: Academic Press, 1981).
25. For a neo-Marxist assessment of the present era of "late capitalism" as characterized by "a new ideological disorientation" born out of permanent economic stagnation and the exhaustion of the legitimatory powers of conservatism and social-democratism (i.e. "liberalism" in American terminology) see J. Habermas, *Die Neue Unvebersichtlichkeit* (Frankfurt/M.: Suhrkamp, 1985); also idem, *Legitimation Crisis* (Boston: Beacon Press, 1975); C. Offe, *Strukturprobleme des kapitalistischen Staates* (Frankfurt/M.: Suhrkamp, 1972).
26. For an Austrian-libertarian assessment of the crisis-character of late capitalism and on the prospects for the rise of a revolutionary libertarian class consciousness see M. N. Rothbard, "Left and Right"; idem, *For a New Liberty,* ch. 15; idem. *Ethics of Liberty* (Atlantic Highlands: Humanities Press, 1982), part 5.
27. On the internal inconsistencies of the Marxist theory of the state see also H. Kelsen, *Sozialismus und Staat* (Wien, 1965).

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Corporate Raiders and Junk-Car Dealers: Economics and Politics of the Merger Controversy

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Fueled by almost frantic efforts to adjust and adapt in the face of intense international competition, American industry undertook an immense corporate restructuring in the 1980s, partly in the form of corporate mergers and takeovers. The magnitude of these corporate acquisitions, both collectively and in individual cases, has been large. The Standard Oil takeover of Gulf in 1984, for example, cost $13.2 billion. That was dwarfed, however, by the $24 billion acquisition of RJR Nabisco by Kohlberg Kravis Roberts & Co. in 1988.

Graph 1 below shows the annual value of mergers from 1980 through 1986, expressed both in nominal dollar magnitudes and constant 1982 dollars, with the 1970 magnitudes shown for comparison. The sharp increase in merger activity after 1982 is clear. Table 1 shows both the numbers and values of mergers for ten major industries, classified by acquired firms. As shown, more mergers occurred in the banking and financial industry than in any other, but the mergers with the highest dollar values occurred in the oil and gas industry.

Spoken and written opposition to such mergers has been so strong that it has dominated the public debate about takeovers. Some of this opposition stems from intellectual and political groups who are hostile to market processes, and who see corporate takeovers as a particularly odious and sterile example of these processes. Much of it also, naturally, stems from corporate managements who have found themselves (for reasons explained below) to be actual or potential targets for displacement through "hostile" takeover. Another source of opposition is organized labor, which has suffered membership losses because of foreign competition and corporate restructuring. A final, prevalent source of opposition is economic ignorance.

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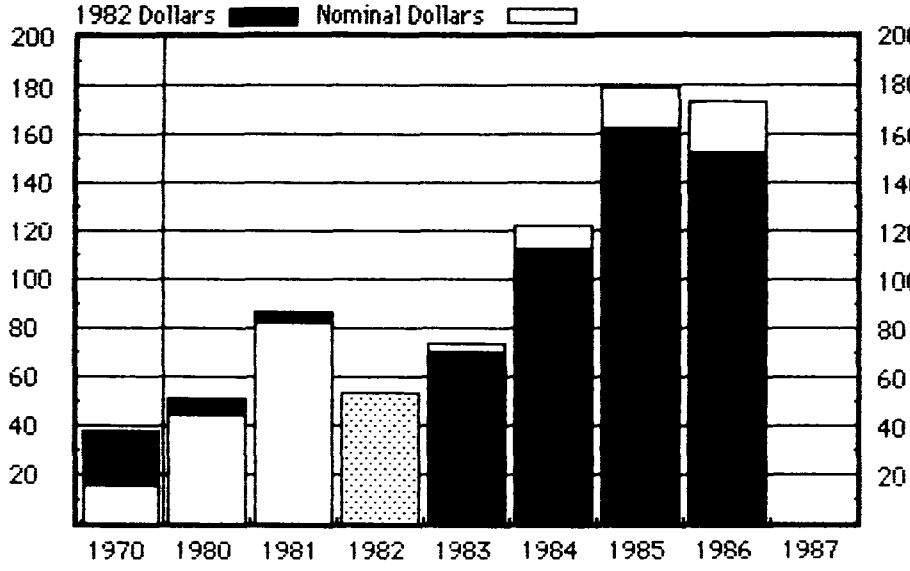
Graph 1: Annual Value Mergers, 1970 and 1980-1986,
in Billions of Real (1982) and Nominal Dollars



Source: *Statistical Abstract of the United States, 1988,* and *The Economic Report of the President, 1989.*

The intent of this essay is to alleviate some of that ignorance. First, the basic economics and empirics of corporate mergers will be discussed. Then, important arguments of takeover opponents, both recent and vintage, will be critically evaluated. A final section deals with some major forces determining legislative and regulatory policy toward mergers over time.

The Role of Greed

The ratio of emotional accusation to dispassionate analysis has been very large in the takeover debate. The charge most frequently and loudly made against corporate takeovers is that they are motivated by greed. At first glance, this seems intuitively obvious. The acquiring firms, corporate raiders, lawyers, and investment bankers involved often clear tens or even hundreds of millions of dollars from a successful acquisition. Such sums stagger the imagination, and the superficial observer naturally concludes that the whole process is simply an ostentatious display of avarice.

Scholarly inquiry necessarily proceeds beyond superficial appearances and characterizations, however. While pointing fingers and shouting "greed" may be emotionally satisfying, and even useful for making converts, the concept is

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Table 1. Merger and Acquisition Transactions: Number and Value by Industry, 1982–1986

industry classification of seller	number of mergers					nominal value (mill. dol.)				
	1982	1983	1984	1985	1986	1982	1983	1984	1985	1986
total	2,346	2,533	2,543	3,001	3,336	53,755	73,081	122,224	179,768	173,137
Oil and gas	80	111	102	86	58	9,166	12,076	42,982	23,160	3,247
Banking and finance	426	311	251	381	415	5,605	13,628	5,846	14,037	19,422
Insurance	81	67	66	67	94	5,718	2,966	3,006	2,694	5,413
Mining and minerals	31	18	12	16	14	355	2,946	347	356	148
Food processing	52	74	58	82	101	3,075	1,164	7,095	11,838	4,707
Conglomerate	14	13	18	14	20	3,974	2,745	6,983	16,302	15,307
Transportation	40	36	36	48	58	1,074	5,255	1,252	2,877	6,829
Broadcasting	47	60	83	93	123	787	3,747	1,918	15,013	8,107
Retail	86	90	130	136	147	1,948	1,489	6,673	10,030	13,683
Brokerage & investment	56	63	86	49	47	861	1,455	1,460	579	1,710
Other	1,433	1,670	1,701	2,029	2,529	21,191	25,609	44,662	82,882	94,544

Source: *Statistical Abstract of the U.S., 1988: 504, table no. 843*

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inadequate as a tool for social analysis. In the first place, the term cannot be given any objective, quantitive definition. What level of desired income constitutes greed? Obviously *any breaking point chosen would be completely arbitrary and scientifically meaningless.*

Besides, people who desire large pecuniary incomes are in an essential sense no different than anyone else. Perhaps the most fundamental of all principles of modern economics is that *everyone is a maximizer.* That is, we would all like to attain, acquire, and accomplish more things than we are able to with our available resources. Consequently, we all rank our ends in order of importance and allocate our scarce means to the attainment of those highest on the list, forgoing the others (i.e., we economize our resource). *Since ultimate income is simply the flow of satisfaction experienced as means are successfully applied to the attainment of ends, and we all want to be as happy as possible, we are all equally "greedy" in that sense.*

Of course there is a difference between Mother Teresa and Carl Ichan; that is, even in this framework it can be useful to differentiate among the *contents* of different individual's value systems, and define a person as "greedy" if he or she ranks the attainment of pecuniary income or worldly goods first, subordinating all other goals. The scientific problem here is that we cannot observe such value systems directly. All such judgments must be *inferred* from observations of people's actions, and it is easy to make mistakes.

Consider John D. Rockefeller, who earned a huge personal fortune in a day when a dollar had about thirteen times its current purchasing power. Was earning such income the only or highest end in Rockefeller's value system? Perhaps, but also perhaps not. As a matter of historical fact, Rockefeller was a loving husband and father who was good to his employees, endowed colleges, charities, and foundations, went to church every Sunday, and paid tithing on every dime he ever earned (Folsom 1987, chapter 5). Earning income may simply have been a means to the attainment of other (perhaps less materialistic) ends with Rockefeller, and this may well be true of some others who seek great wealth.

None of this is to deny that mergers are undertaken to obtain monetary profits, whatever the ultimate uses intended for such profits. Even so, this tells us nothing about the social value of the merger process or of individual acquisitions. Economists since Turgot and Smith have understood that in a competitive market system it is precisely the desire to obtain profits and avoid losses that causes entrepreneurs to shift resources from locations and employments in which the public values them less to those in which the public values them more, and to use them efficiently. *The remaining question is simply whether or not merger activity is an example of such efficiency and value-enhancing processes.* For this reason if not other, the charge of "greed" is ultimately meaningless.

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Conglomerate Mergers

While the emotive charge that corporate acquistions are motivated by greed and avarice may have no validity as a criticism of such acquisitions, recognition of the universal maximizing character of man and the profit motive does raise a central issue: Why *do* mergers occur? In particular, why is there a profit to be made by acquiring some firms and not others?

There is not just one answer to this question, but several. First, a simple point that most observers seem to have missed is that many firms merge to reduce risk. Economists define corporate risk in terms of the variability of the rate of return earned by stockholders of the firm. Such variability stems from variability of demand and supply conditions, which cause prices and sales to fluctuate. Since conditions differ from industry to industry, so does the degree of risk.

It is well recognized in the economic literature that bearing risk means bearing a (nonpecuniary) cost of doing business. If a firm is to stay in business, the unit price of its product must be high enough to cover *all* unit costs. It follows that, other things being equal, both the product price and pecuniary rate of return will vary positively with the degree of risk faced by firms in an industry.

Now investors in paper assets have always known that they could reduce their personal risk by diversifying their investments across stocks and/or bonds in unrelated lines of business, so that the price (and hence rate of return) fluctuations of those different assets in the portfolio would (in the absence of general market movements) be uncorrelated. Managements of firms realized that they could do something similar. They could use surplus (retained) earnings or borrowed funds to purchase other *firms* in unrelated lines of business. This form of merger is termed a "conglomerate merger."

Since risk is a real (though unobservable) cost that product price must cover in equilibrium, successful risk reduction through conglomerate merger means genuine cost reduction. Any net reduction in real unit costs of supply results first in higher profits for the firm. What is more, for the profit maximizing firm, any marginal cost pricing rule, or even a fixed markup pricing rule, implies that at least part of any such cost reduction will be passed on to the public in the form of lower product price and higher output. Both investors and consumers gain, and such a risk reduction is clearly socially beneficial.

Not all conglomerate mergers (or mergers of any type) are successful. Mergers are entrepreneurial acts based on anticipated future conditions, and entrepreneurs often make errors in judgment. In particular, the top managers of an acquiring firm may not be able to operate an acquired business with which they are basically unfamiliar as efficiently as they had anticipated. The (stock market) value of the firm may therefore *fall* after the merger. The large merger wave of the 1960s was primarily a conglomerate merger wave, and a significant portion of those acquisitions were unsuccessful.[1]

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Some analysts have concluded that the bulk of mergers are unsuccessful, and that the process is therefore harmful on net. David Ravenscraft and F. M. Scherer (1987, 193–210), for example, condemned the merger wave in the 1960s and 1970s after finding that firms in their large sample had lower rates of return over several years after merger. But since a large majority of those mergers were conglomerate mergers, undertaken to reduce risk, falling post-merger *pecuniary* rates of return is precisely what should be expected if most such mergers were successful. As long as nominal rates of return fell less than risk, real rates of return adjusted for risk would then be higher.

It is important to stress that, if a conglomerate merger is to be a success, the decision as to what firm to acquire cannot be made randomly. The firm to be acquired must not only be in a largely unrelated line of business, but it would also be best to find a firm that could be purchased at a bargain price. This observation brings us to the next point.

The Market for Corporate Control

The corporate form of business organization is one of the great inventions of human history, allowing, as it does, the pooling of private resources on a scale previously undreamed. A basic problem, however, is that managers, as hired agents of the owners (stockholders) with fixed salaries, have less than perfect incentives to use corporate resources in ways that maximize stockholder returns. This agency problem is minimized if top executives own enough of the firm's stock that a significant portion of their compensation depends on firm performance, and this arrangement is in fact typical of well-managed firms. Not accidentally, it is typical of poorly managed corporations that the top executives own very little stock in their firms.

Stockholders do have other methods of pressuring their agents. Boards of directors can hire and fire managers, and proxy fights for control of boards do occur. Managers have the edge in these struggles, however. For one, they can use corporate resources to lobby for their position, while rebel stockholders must use their own resources. Also, external benefits generated by individual stockholder efforts of this type reduce overall stockholder efforts.

The opportunity to buy or sell shares freely provides another control mechanism, however. Economists believe the stock market to be highly efficient at setting the share price of a firm's stock accurately at the present value of all of the firm's exepcted future net earnings per share from production and sales. Large numbers of people evaluate the stock of a publicly traded corporation, and, although individuals may make mistakes, their errors are likely to cancel in the aggregate. Also, new information on future firm performance spreads rapidly and is quickly captitalized into present share values.

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Other things being equal, the magnitude of a firm's future production, sales and earnings depends, of course, on the efficiency and skill of its management. If the present and expected future earnings are below their potential magnitude because of comparatively inefficient or lackadaisical management, the market will price the firm's stock accurately at a value below the value the firm's asset would have under a more efficient management. In this sense the firm's stock will be "undervalued."

An opportunity then exists for some other firm or entrepreneur (often termed a corporate raider) to purchase the firm at a price below its potential value and make a profit by displacing the previous management and operating the firm efficiently (or by selling parts of the firm to others who can use them efficiently, and hence value them highly). If stock of the firm to be acquired is depressed enough, such a profit opportunity exists even if the buyer has to pay a substantial premium over the pre-merger share price. Indeed, such premiums average over 30 percent.

Such takeover attempts (termed hostile when opposed by the managements of the target firms, and friendly when not opposed) constitute what Manne (1965) termed the "market for corporate control." If this market operates in the fashion claimed, it is socially beneficial because it tends to shift control of corporate assets from less to more efficient managements. In addition, the very *threat* of displacement through takeover arguably pressures existing managements to act in the interest of the firm's owners (stockholders), using corporate assets in such a way as to maximize the present value of the firm.

A closely related argument developed by Donald Dewey (1961) is that mergers are a civilized alternative to bankruptcy by which the assets of failing firms are transferred to successful firms. The major difference in the two concepts is that Dewey's relates best to friendly takeovers, or horizontal mergers within an industry, while the notion of the market for corporate control is more inclusive in scope. Both perspectives imply, however, that acquired and acquiring firms should usually be distinguishable by their pre-merger performance.

Economists Victor and Carol Tremblay (1988) found this to be the case when they recently examined the mergers that occurred in the U.S. brewing industry between 1950 and 1984. They discovered that the average two-year growth rate in market share for the acquiring firms before merger was 17.6 percent. That is, acquiring firms had increased their market share by that much on average in the two years before a takeover. For acquired brewing firms, in contrast, the average two year growth rate in market share prior to acquisition was −11.1 percent. Clearly the acquired firms were less efficiently operated, declining firms.

Similar evidence has been discovered in many other studies of mergers. When the Federal Trade Commission studied the merger wave of the 1960s, for example, it found that the firms acquired by the nine largest conglomerates had, before

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their acquisition, been operating only about 75 percent as efficiently as the average of the firms in their industries (Brozen, 1982, 336).

Many empirical tests also focus on the *post*-merger performance of the firms. If the market for corporate control operates as advertised, the post-merger value of the most acquired firms should be higher than their pre-merger value. Statistical tests on adequate samples always find this to be the case. But such studies sometimes find that the values of acquiring firms are reduced, such that the post-merger values of the merged firms do not exceed the pre-merger values of the separate firms. On this basis some economists argue that mergers are not value-enhancing and socially beneficial.

Other economists are unconvinced, however. K. Paul Asquith (1980), who studied all post-war mergers involving New York Stock Exchange listed firms, found that the bulk of acquired firms were in fact poorly managed firms, the stockholders of which had lost money for several years prior to acquisition, and that the combined firms had higher value than they had separately. Similarly, Eckbo (1988), studying Canadian mergers, recently found that both target and bidder firms earned large gains from takeovers.

Even more striking are the results of a recent massive study by Lichtenberg and Siegel (1987), who examined 20,000 plants accounting for two-thirds of U.S. manufacturing shipments. They found that those plants in this sample which changed owners had previously been less productive, on average, than others in their industries, and had experienced declining productivity before the ownership changes. They also found that, on average, productivity in these plants began rising about a year following the ownership changes, until they nearly equaled that of plants which did not change owners.

Synergies and Scale Economies

Another factor or set of factors known as synergies motivate many mergers. A synergy exists if characteristics of the separate firms are such that, after merger, the combined firm is able to operate better or more efficiently than before, even if the separate firms were efficiently managed. The classic form of synergy stems from the different but complementary characteristics of the separate firms.

Yale Brozen (1985, 8–9) cites the example of Shell Oil's purchase of Belridge Oil in 1979, a merger that allowed Shell to apply its superior oil-recovery technology to Belridge's large oil reserves, *doubling* Belridge's rate of production. Even though Shell bid much more than the initial value of Belridge stock, the earnings of Belridge more than doubled. The transfer of ownership and management to Shell benefited Belridge stockholders (and, it should be added, the consuming public).

Another form of synergy may be important in some cases. Some production technologies are subject to increasing returns to scale, such that raising the scale

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of the firm results in proportionately greater increases in output. Other things equal, this reduces unit costs of production. A change to such a technology in an industry provides motivation for firms to build additional capacity, making higher outputs, greater profits, and lower prices economically feasible.

It may be, however, that market demand in the industry may not be large enough to support a large number of the higher scale firms, even at lower unit output prices. In that case, the advantages of scale can still be achieved through mergers by existing firms. This seems to have been the case with much of the merger activity in the brewing industry mentioned above, as firms that were growing and achieving scale economies absorbed others. According to C. F. Keithahn (1978), the minimum efficient firm size for a brewer increased from 4 million barrels in 1960 to 18 million barrels by 1978. Here again, the public benefited from the mergers in terms of higher output and lower real costs of production.

Junk Bonds and Junk Car Dealers

The competitive market system is dynamic and innovative by nature. While most innovations in product, production process, form of business organization, etc., are socially beneficial, they often distress those with vested human or physical capital of older types, or entrenched positions of authority. One of the innovations of the 1980s merger wave that has had this effect is the use of "junk bonds" by the firm of Drexel Burnham Lambert and others to finance many corporate acquisitions.

Junk bonds are simply high-yield bonds that have a default rate marginally greater than that of high-grade bonds. The two features are correlative, and simply illustrate forcefully the principle that the market compensates people with higher returns for bearing greater risk. The term "junk bonds" is therefore unfortunately and unfairly denigrating. Its universal adoption indicates the extent to which the opponents of mergers have been able to dominate the public debate.

The appearance of junk bonds sent a shock through the ranks of managers of large but poorly performing firms because this form of finance provided additional funds allowing corporate raiders to conduct hostile takeovers on a scale that could seldom be undertaken through conventional financing alone. This was true even though "leveraged" or debt-financed buyouts have never exceeded 22.7 percent of the value of all completed mergers in a single year (Shorter 1989, table2). In essence, junk bond investors have been willing to supply funds based on the estimated post-merger value of the target firm's assets.

The last point deserves emphasis, since the use of such a high-cost form of finance raises the question of why corporate raiders would be willing and able to cover such costs, and why lenders would expect to get paid. Again, the sensible answer would seem to be that both borrowers and lenders of such funds anticipate a rise in the value of the assets of the firm to result from the merger process,

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whether because the firm is currently underpriced because of poor management or because potential synergies exist.

In many cases the acquiring firm or corporate raider quickly pays off part or all of the debt incurred in the takeover by selling off divisions of the acquired firm. Indeed, it is sometimes the most profitable parts of the firm that are sold. This corporate dismemberment has been difficult for the public to understand and easy for the entrenched managements and intellectual opponents of mergers to denigrate. A simple analogy may illuminate the matter, however.

Consider used auto parts dealers (that is, automobile junkyard operators). Why is it possible for people in this business to purchase cars and sell their usable parts for *more* than the cost of the car, by enough to make at least a normal return on investment and stay in business? The obvious answer is that a junk car can be purchased cheaply (at a price less than the value of its separate parts) *because it is not functioning very well as a unit.* That is, the present value of its anticipated future stream of services is low.

It is also clear that in purchasing such a car and selling its good parts (for a profit) to those who can use them, the dealer is performing a valuable social service. Why, then, is it not also clear, that a corporate raider is often able to acquire a company at a low price (below the value of its separate parts) precisely because it is not functioning very well as a unit, and that in proceeding to sell parts to those who need and can use them, for a profit, the raider is also performing a valuable social function?

Examples of this process are easy to come by. Amar Bhide (1989) cites the hostile takeover of Revlon by Ronald Perelman for $1.8 billion in 1985. Since the death of its founder in 1975, Revlon had been using the cash flow from its cosmetics business to fund acquisitions of health care firms. Perelman quickly sold five health care units for nearly $2 billion, gaining almost $200 million in profit. Bhide also cites the hostile 1985 takeover of the conglomerate AMF for $560 million by Irwin Jacobs. Jacobs recovered his entire purchase price by selling off eight of AMF's units and kept its boat, sporting goods, and energy operations as a reward.

As Bhide goes on to show for 1985–1986, this pattern of purchasing conglomerates and selling off units unrelated to the primary business of the firm is typical of hostile takeovers during the 1980s merger wave. By increasing specialization, focusing managerial attention on the primary business, the effect is generally to increase the efficiency of the firm's operation. Also, the purchasers of the divested units are usually investment groups or the unit's own managers, who intend to operate the business as a single entity, or are single business companies in the same or similar lines of business. Arguably, the hostile takeovers of the 1980s merger wave have primarily been aimed at correcting those conglomerate mergers of the 1960s and 1970s that turned out to be entrepreneurial mistakes.

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Three Objections to Hostile Takeovers

The hostile takeovers of the 1980s have in particular generated a flood of published opposition from intellectuals and entrenched managements, and these opponents have not been inarticulate in their objections. One of the central themes of their speeches and publications is that the corporation has social obligations—borne by and vested in the management—to *many* groups other than the stockholders. Such constituencies are argued to include employees, the local community, and even society at large.

This argument has two functions. First, it is aimed at counteracting the claim of equally articulate corporate raiders such as T. Boone Pickens (1988) that raider's actions are expressions of a stockholder revolt against unresponsive and inefficient managements. More importantly, it offers a rationale for management's discretionary use of corporate assets in ways that may *not* benefit stockholders, and for any resulting poor performance in terms of rate of return or share values.

The question of whether the corporation has legitimate social obligations that would not be fulfilled by those efficient production and marketing operations that maximize shareholder wealth is too difficult to treat in depth here. Such claims are hazy, however, and it is hard to see the "social obligation" argument as much more than a plea for managerial discretion without accountability. Indeed, it should be clear that managements that do not act to maximize shareholder returns are usually the ones that also fail employees, local communities, and society.

A closely related theme in the writings of takeover opponents is that managers of actual and potential takeover targets are usually engaged in actions and investments aimed at improving the long-run health and profitability of their firms at the time of takeover attempts. Corporate raiders, in contrast, who care only about short-run profits, apparently (the argument is unclear on this point) take advantage of resulting temporary low share values to initiate hostile takeovers.[2]

Even aside from its cloak of self-righteousness, this argument is defective. It is true that "long term" investments yielding improved future earnings may come at the expense of present profits. Such investments will not reduce current share values of the firm, however (making a takeover profitable) unless the tradeoff between present and future earnings is such as to reduce the expected present value of the whole future earnings stream, in which case the investment is unjustified. If the long-run investment actually represents a more efficient use of the firm's (i.e., stockholders') resources, theory and empirical evidence imply that share values will immediately rise (See McConnell and Muscarella 1985). Motivation for a takeover attempt is reduced in such a case.

Of course, these defenders of the corporate status quo are not arguing that their long term investments are actually reducing the present value of their firm's future earnings stream. Their implicit claim is that farsighted management see the net beneficial effects of their long term actions on the firm's net income stream, but

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that shortsighted investors do not and therefore act to set present share prices only on the basis of current profits, motivating the takeover attempts.

If ever there was evidence of the arrogance of some entrenched corporate managements, and of their contempt for their own stockholders, this argument is it. Worse, direct empirical evidence contradicts the claim that managements of takeover targets have a particularly "long term" perspective. Pound et al (1986) found that target firms typically spend much *less* on research and development than other firms in their industry.

A third theme pervading the published and broadcast arguments of merger and takeover opponents is that the use of funds for corporate acquisitions diverts and reduces the amount available for investment in new capital goods. Broad historical evidence seems to cast some doubt on this claim, however. The period of the 1960s in which the conglomerate merger wave occurred was also a period of rapid investment and output growth, apparently stimulated by the Kennedy administration's tax cuts. In contrast, the decade of the 1970s, in which comparatively few mergers occurred, was a period in which investment, productivity growth, and output growth all fell below their historic postwar trends, to the point that many economists became worried.[3] The expansion of the 1980s, however, in which the latest merger wave occurred, has been led by rapid investment set off by the Reagan administration's tax reductions (Council of Economic Advisers 1986, 37–53).

Yale Brozen argues forcefully that the acquisition of the old assets is not a process that diverts financial capital from the creation of new assets. Indeed, in his view an increase in the demand for old assets encourages the creation of new ones. Curious about Brozen's claim, this author calculated the ratio of total mergers to the total number of corporations in mining and manufacturing to obtain a measure of relative merger activity for the years 1950–1970. Nominal expenditures on new plant and equipment in these industries were then deflated by the GNP deflator for Producers Durable Equipment to obtain a measure of real investment for the same years. These two relative measures for each year are expressed as Cartesian coordinates in graph 2. The relationship is clearly *not* negative, as implied by the arguments of merger critics, but positive. The computed correlation coefficient in the sample is $r^2 = .70$.

There is clear logic behind this positive correlation, as Brozen explains. When old assets are purchased from those who invested in them originally as new assets, and who have a comparative advantage in making such investments (but perhaps not in operating the assets), those individuals are provided with funds to undertake more such investments. It should be understood, though, that even if corporate acquisitions were *not* associated with additional investments in new plants and equipment, they would still add to real production and income if the ownership transfers caused existing assets to be used more efficiently.

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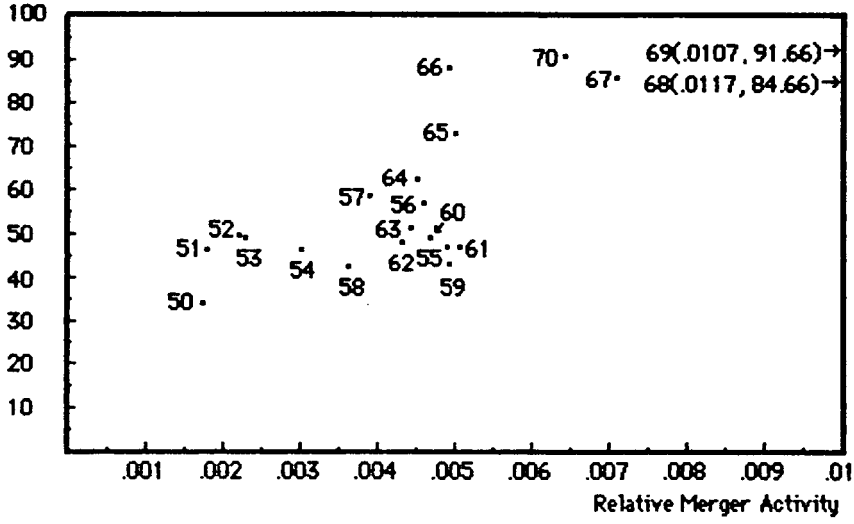
Graph 2: Relative Merger Activity and Real Expenditures
on New Plant and Equipment in Manufacturing
and Mining, 1950–1970
Investment, in Billions of 1982 dollars



Sources: *Historical Statistics of the United States, Colonial times to 1970,* and *The Economic Report of the President, 1989*

Corporate Takeovers and Disemployment

The single most disturbing aspect of hostile takeovers to their opponents and the general public is that they are often followed by employment reductions or plant closings or both. Indeed, vocal takeover opponents argue that share price premiums can only be paid and profits obtained in the takeover process by reducing employment in the target firm. Consider, for example, the following statement by John G. Smale, Chief Executive of Proctor & Gamble (1986, 330–331):

> I don't want to imply here that some synergies don't result following forced restructuring. But the word synergies in most cases is basically a euphemism for fewer people. The principal way restructured companies can be more efficient is to lower costs and that means, by and large, fewer employees.
>
> I know. In the flurry of companies being put on the auction block, we've had several opportunities to examine companies "in play." The figures always tell the same story. Justifying paying a premium over market price has to involve a reduction in the number of people the company employs.

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Empirical evidence does indeed show that employment reductions follow takeovers. Amar Bhide found evidence of layoffs and plant closings following about two-thirds of hostile takeovers in 1985 and 1986. But this was also true of many acquiring firms, and also of others not involved in takeovers at all. As Bhide notes, large companies in the United States began reducing employment about two or three years before hostile takeovers became widespread. Employment in the Fortune 500 fell approximately 6 percent between 1981 and 1986.

It should be remembered, however, that the employment loss in large firms in this period was more than compensated for by employment growth in small and medium sized firms and entry of new firms. In 1980, before the recession, the employment rate (percent of the population unemployed) was 59.2. The unemployment rate (percent of the labor force employed) was 7.0, and per-capita real disposable income was $9,722 (in 1982 dollars). By 1987 the employment rate had risen to 61.5 percent, the unemployment rate had fallen to 6.1 percent, and real disposable income per-capita reached $11,012. Total employment rose by over 13 million in this period (Council of Economic Advisers 1989, 346, 351, 352).

The argument that the profits of the corporate raiders are taken from the pockets of those disemployed from the target firms has a small element of truth and a large element of myth. Employees, white-collar or blue-collar, are employed to *do* something, that is, to add to the firm's output and revenue. It never increases a firm's profits to release an employee whose addition to firm output has a market value equal to, or in excess of, his cost to the firm, since revenue would then fall as much or more than costs. No corporate raider would be such a fool as to do this.

It pays the firm to release only employees whose addition to firm revenue is less than they cost the firm. Since labor is a scarce resource, with alternate uses, it is clearly not *socially* beneficial for the firm to *retain* such employees. If they cannot be made more productive, such employees should be released to find jobs at which they can provide the consuming public with goods or services having a value at least as high as the sum of their wage plus non-wage employment costs, contrary to the apparent views of Mr. Smale et al.

It may certainly be the case, however, that the retaining of such relatively unproductive employees by (and including) inefficient management is one of the factors causing low returns and share values, which is corrected by a hostile takeover. The resulting logically anticipated increase in future profitability partly accounts for the rise in the value of the target firm and the profits of the corporate raider. In this case, as in others, the raider has performed a beneficial social service.

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Alternative Explanations for Mergers

Most attacks on merger activity and the economic theories that find it to be beneficial are clearly self-serving and destructive criticisms, offering nothing beyond greed as an economic explanation. Not all opponents of mergers are unobjective, reflex opponents of market processes, however. A significant minority of economists doubt the social benefit of mergers. Even some strong defenders of the market, such as Murray Weidenbaum, are unconvinced that mergers are beneficial. Weidenbaum (1988 and 1986, 278) notes that many studies show a strong positive correlation between firm size and managerial salaries. From this he concludes that the primary motive for mergers is the desire of professional managers to obtain larger salaries by operating larger firms.

It is really rather surprising that Weidenbaum would offer such a casual explanation for this phenomenon. For one thing, it would seem not to explain hostile takeovers at all. Given the enormous magnitude of profits often made from post-merger asset sales, it seems hard to believe that enhanced salary is the prime motivator of corporate raiders. Indeed, one of the chief complaints by business executives who have felt threatened by takeovers has been that the raiders seldom end up operating the merged firms.

Fundamentally, the whole phenomenon by which the values of target firms rise, and (in cases of dismemberment) parts of such firms so often sell for more than the whole did in the merger, is unexplained by Weidenbaum's hypothesis. Many mergers require some external debt finance, often a greal deal. How would individuals simply interested in larger salaries convince the suppliers of this capital that they could benefit by doing so? Why is the default rate on junk bonds as small as it is?[4] And if target firms are not poorly managed and hence undervalued firms, then how are target firms chosen?

The theories of synergies and of the market for corporate control explain all of these phenomena. Weidenbaum's hypothesis does not, unless it is combined with those theories as a statement of *additional* motive for takeovers. That is, those attempting a corporate acquisition may expect to gain both quick profits and a higher salary (if they wish to operate the firm) from the larger firm size and the improved efficiency and consequent appreciation in the value of the acquired assets.

A more popular explanation for mergers among their opponents is that they generate monopoly power. In the case of horizontal acquisitions, the number of firms in an industry is reduced by one, and the merged firm may theoretically control a large enough proporation of industry supply that it can, by restricting output, raise the price to a more profitable level. In the case of conglomerate mergers, the argument goes, the conglomerate may set the price of the product

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of its acquired firm low, subsidizing its losses through profits earned in other industries, until the acquired firm's competitors leave the market. The acquired firm then gains market power and can set the price high and earn monopoly profits.

This theory at least has the advantage of being able to explain the source of the increased post-merger profitability and value of target firms in terms of basic microeconomic theory. There are many objections, however. A large firm that has no cost advantage over its rivals, and which restricts its own output in order to raise industry price above the competitive level, will lose sales and market share to other firms in the industry because they will be able to underprice it. If the firm is a monopoly, its actions in raising price and profits will attract other firms to enter the market. In either case, the firm will, if it keeps restricting output in an effort to keep the price high, eventually lose both its large market share and ability to control the price.

Advocates of the market concentration doctrine respond that competitors may be prevented from entering the market by some sort of barrier. In the absence of a cost advantage by the large firm, however, the only barriers likely to be effective are governmental restrictions. And if the firm already has competitors in the industry, which is nearly always the case (except where government has prohibited competition), talk of entry barriers is meaningless. The only way the dominant firm could then maintain the high price and profits would be by colluding with its rivals to form a cartel. But then the entry problem would emerge again.

An alternative perspective is that firms that obtain and maintain a large share of the assets and sales in an industry (whether through merger to obtain synergies or scale economies or through innovation in product or production technique) are usually more efficient than their rivals, and therefore have a cost advantage (or a product quality advantage or both). As such firms reduced cost and increased their market share they would add to supply, reducing the product price and lowering the profits of their rivals.

If this theory is correct, the large firms in concentrated industries should earn comparatively high rates of return, but small firms in such industries should earn rather low rates of return. The market concentration doctrine, in contrast, implies that both large and small firms in a concentrated industry should earn above average rates of return. Testing these hypotheses, Harold Demsetz (1973) found that profit rates in large firms were in fact positively related, and profit rates in small firms negatively related, to measured concentration in a large sample of industries.

Since then, other studies such as those by Peltzman (1977) and Smirlock (1985) have supported the view that firms that gain large market shares do so primarily through superior efficiency. On the other hand, such positions of dominance and advantage seem frequently to be transitory. There is a rather large turnover of

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dominant firms over time, as well as significant instability of market shares in concentrated industries (Hymer and Pashigan 1962). Both of these facts contradict the market concentration doctrine that entry barriers and price conspiracies are frequent and effective.[5]

Another prediction of the market concentration doctrine as it relates to mergers is that prices should rise in industries experiencing merger activity, relative to others that experience little or none. A study by the National Industrial Conference Board (1929) of the merger wave that occurred between 1900 and 1913, however, found that in twenty-six industries experiencing important consolidations prices fell by 13 percent, while in twenty industries in which no consolidations occurred, prices increased by 10 percent. The board also found that this same pattern of relative price changes held up when it contrasted such industries in the period from 1913 to 1925.

Such evidence—in combination with that obtained from studies of more recent merger samples (Eckbo 1985, for example)—strongly contradicts the view that mergers are motivated and explained by resulting increases in market power. It is wholly in accord, however, with the view that corporate acquisitions are part of a competitive market for corporate control that causes resources to be used more efficiently through synergies or improved management, enhancing output and real income in the economy while lowering prices.

The Politics of Mergers

Public apprehension generated by the formation of many large firms through mergers in the late nineteenth century resulted in passage of the Sherman Antitrust Act in 1890 and the creation of the Federal Trade Commission (FTC) in 1914. Since then, mergers have been subject *ex ante* to governmental scrutiny and regulation. Over time, changes in governmental policy resulting from changes in economic theories and from interest group pressures have greatly affected merger activity.

Modern economic theories of business regulation seem to stress the primacy of interest group pressures. The public has been taught that regulators act to protect them from predatory business practices. Many economists now believe, however, that regulatory agencies are either created or "captured" by the dominant interests in the industries themselves, which then use the agencies to obtain competitive advantages that could not be obtained in the market.[6]

The Interstate Commerce Commission and the Civil Aeronautics Board, which regulated the railroad, trucking and airline industries for many decades, are good examples. Instead of protecting the public from monopolistic abuses, these agencies essentially acted as cartel enforcing agencies for the industries themselves. The regulators restricted entry of new firms, set high minimum rates, and specified business practices designed to limit internal competition in these industries.

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The modern theory of regulation may understate the power of economic theory and empirical evidence, however. Accumulating evidence of the anticompetitive effect of such regulation, and identification of its nature and source, combined with recognition by some industry members that they might gain from competition, resulted in significant deregulation of the transportation industries after 1978.[7] All of these same forces have operated in merger policy over the years.

In the 1950s and 1960s, merger policy was guided by a strict market concentration doctrine. The Department of Justice and the FTC opposed virtually every horizontal merger that, in their view, might conceivably add to concentration and market power within any industry. This fact partly accounts for the conglomerate character of the 1960s merger wave. Indeed, a larger than normal proportion of those mergers may have been failures, as merger activity was diverted by a misguided public policy into less efficient channels. This merger wave dissipated when the FTC and the Justice Department began active opposition to conglomerate mergers.

In the late 1960s and early 1970s, economists such as Yale Brozen, Harold Demsetz, and Sam Peltzman began making successful theoretical and empirical attacks on the market concentration doctrine. Simultaneously, theories of synergy and of the market for corporate control began to inform professional economic opinion on mergers. In 1980 President Reagan appointed Dr. James Miller III to be head of the FTC, and William F. Baxter became head of the Antitrust Division of the Justice Department. Both were adherents of the new view, and both departments published relaxed merger prosecution guidelines in 1982 and 1984.[8]

The combination of a new regulatory environment, the invention of junk bond financing, and certain favorable tax changes resulted in the 1980s merger wave. As merger activity expanded, however, opposition grew and a regulatory counterattack was launched. Lacking FTC support, this counterattack has been diffused through elements in Congress, state governments, and other Federal agencies, and has only been marginally successful to date.

In 1987 the Federal Reserve System used its power to regulate "margin" purchases of securities (purchases that employ a significant amount of borrowed money) to limit the use of junk bonds in financing hostile corporate acquisitions. This regulation followed a petition by Unocal to the Fed to take such action. Unocal had just been a takeover target of corporate raider T. Boone Pickens (Carney 1987).

In the mid-1980s some state governments, under pressure from corporate managements and a public misinformed by television networks which had (in some cases themselves been takeover targets), began passing anti-takeover laws. They were legally contested, but in April 1987, the U.S. Supreme Court upheld an Indiana anti-takeover law. A similar law passed by the Ohio legislature was lobbied for by executives of Goodyear, who were threatened by a takeover bid from

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Sir James Goldsmith (Dwyer 1987). This legislative action ended Goldsmith's takeover effort, with significant loss to Goodyear stockholders.

In July 1989, the House Education and Labor Committee attached to the budget bill a proposal by Congressman Peter Visclosky (D-Ind.) forcing firms to put worker representatives on the boards of trustees controlling pension fund investments (Garland 1989, 204). Pension funds are large purchasers of junk bonds, even though such bonds constitute only 2 percent of fund portfolios. Workers afraid of disemployment oppose corporate takeovers, and Visclosky openly stated that the intention of his proposal was to reduce or foreclose this source of takeover funding.

Add to this the recent persecution through selective prosecution of corporate raiders for white collar crimes, and once again the public is being told that regulation and legislation are being employed to protect their interests from corporate predators. In fact, these and other legal and regulatory actions are aimed, as such actions usually have been, at protecting the dominant corporate interests from competition. In this specific case, entrenched, inefficient corporate managements are being protected from competition for corporate control. If such actions succeed, the public will be the loser again.

NOTES

1. Estimates of the proportion of conglomerate mergers in all mergers in this period run as high as 82 percent.
2. I have done my best here to give logical formulation to a generally hazy argument. For one of the clearest presentations, see Smale (15 March, 1989), 330–332. The same arguments have been adopted by numerous other corporate spokesmen.
3. See, for example, the symposium on the productivity slowdown in the *Journal of Economic Perspectives* 2 (Fall 1988), and the literature cited by those authors.
4. Robert A. Taggert (1988, 12), reports the 1984–1985 default rate on junk bonds averaged 1.53 percent. This is not terribly higher than that on rated corporate bonds, though some estimates place the junk bond default rate somewhat higher. Taggert also demonstrates that the widespread use of junk bonds has *not* caused the corporate debt/equity ratio to deteriorate in the 1980s, as so many professional pessimists seem to think.
5. Hymer and Pashigian actually found market share stability to be *lower* in more concentrated industries.
6. Often attributed to George Stigler, the central idea probably originated with the historian Gabriel Kolko (1963).
7. The Airline Deregulation Act of 1978 was followed by the Motor Carrier Act of 1980. The public benefited immensely from both acts in the 1980s as competition increased in these industries.
8. For a hostile view of these events by an economist who headed the FTC Bureau of Economics for many years and is a strong advocate of the market concentration doctrine, see Mueller (1986, 27–66).

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Wilsonianism: The Legacy That Won't Die

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In *American Power,* a survey of American foreign policy and its chief architects since 1914, John Taft observes that the shadow cast by Woodrow Wilson, our twenty-eighth president, has affected our long-term view of international relations. Taft demonstrates his point by citing the appeal to Wilsonian ideals made by politicians and thinkers as ideologically varied as William Bullitt, Chester Bowles, Henry Wallace, Herbert Hoover, John Foster Dulles, Walter Lippmann, Franklin Delano Roosevelt, and (even intermittently) George F. Kennan. One of Richard M. Nixon's first acts upon becoming president was to move a portrait of Wilson into his private office. A self-described political realist, Nixon may nonetheless have felt it expedient to associate himself publicly with the early twentieth-century personification of American internationalism. Although not all American public figures have interpreted the Wilsonian legacy in the same way, yet a general admiration persists for Wilson's "idealism" in approaching international relations. All of the men Taft mentions followed Wilson in believing that America should aspire to reform world politics, and they viewed the wars into which the United States was drawn as opportunities to promote this end.[1]

As late as 1957 Herbert Hoover wrote a book in defense of the president he served during the First World War. Hoover's *Ordeal of Woodrow Wilson* stands out as one of the few examples of saccharine prose in the work of a usually sober civil engineer. It also doggedly defends Wilson's participation in the Great War while ignoring the wartime violence committed against German-Americans, directly or indirectly, by his government.[2] Significantly, Hoover, a German-American, long opposed America's entry into the Second World War—like Walter Lippmann, another German-American, who also remained a self-described Wilsonian.

Yet it is also clear that the most conspicuous legatees of the Wilsonian heritage have not been either Republican isolationists of the late thirties or German-

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Americans trying to move into the WASP establishment. They have been primarily those who admire Wilson's major political accomplishments, a permanent administrative government staffed by civil servants and an activist foreign policy aiming at the global imposition of democratic government. Robert Nisbet is correct in *The Present Age* to see in Wilson's textbook on comparative government, *The State,* a blueprint for his later presidential reforms: taxing wealth; federal control of banking practices; limiting the work hours of railroad employees; and bestowing on a growing body of civil servants both tenure and higher guaranteed wages. These acts, according to Nisbet, were not part of a hand-to-mouth policy, but stages in the fleshing out of a new conception of a positive national government.[3] In a youthful essay in *The Political Science Quarterly* (June 1887), Wilson affirmed that "the democratic state has yet to be equipped for carrying these enormous burdens of administration which the leaders of this industrial and trading age are so fast accumulating."[4] In his presidential speeches of 1912 published in *The New Freedom,* Wilson also warned that "the program of a government of freedom must be positive, not negative merely." Business must be subject to the "watchful interference of the government" lest it collude against the public interest.[5]

As the quintessence of Murray Rothbard's "welfare-warfare state," Wilson's regime exploited military challenges (partly created by its own adventurousness) to expand government planning. Wartime boards and commissions regulated everything from food prices, wages, and transportation to expressed or implied political opinions. They also produced a mobilized but browbeaten population. A Department of Information controlled and filtered the distribution of news; and local committees were organized, under federal supervision, to report on the expression of pro-German or anti-American sentiment.[6]

The seamy sides of Wilson's wartime administration have been left out of the accounts of his presidency that appear in the *Encyclopedia Britannica, World Book,* and *Encyclopedia Americana.* But, as Nisbet rightly observes, the efforts at thought control followed from a well-defined view of the state. It is one that Wilson had articulated and which the early *New Republic* and its founder Herbert Croly, a future admirer of Mussolini's corporatist state, thought that the war was putting into practice.[7] A rationally planned political order under state administrators would reshape and, to some extent, replace an independent civil society. The War Industries Board, formed in 1917, provided an unprecedented opportunity for economists and statisticians to change the face of America through the restriction of competition, price setting, and other moves toward a collectivized war economy. The right regulation of production and consumption and the mobilization of the entire population for national goals were hailed as wartime achievements by leading economists and philosophers. John Dewey, the revered teacher of Sidney Hook, hoped that America's entry into the war would spell the "beginning of the end

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of business'' and the triumph of ''industrial democracy'' and of ''democratic integrated control.''[8] In the fall of 1918 the *New Republic*'s editors boasted that the progressives had ''revolutionized our society,'' by totally altering the state's relationship to the American people.[9] Wilson viewed such a revolutionary order as the endpoint of a historical process that he had discussed in *The State*. The national state as conceived by him had to encroach on established property rights and social relationships in order to be true to its democratic mission, doing for the people what they otherwise could not do for themselves. The essence of freedom, and virtue, Wilson proclaimed in 1912, was ''public service.''[10] From the spring of 1917 on, the Wilsonian state expanded its administrative role to thinking as well as acting for American citizens.

Since the Bolshevik Revolution it has been claimed that the critical political choice of the twentieth century is between Lenin and Wilson. The statement may be correct, but those who have made it have usually carried political baggage. For example, in *Wilson vs. Lenin: Political Origins of the New Diplomacy, 1917–1918*, the Marxist historian Arno Mayer has spoken of the contrast between the two leaders of 1917, while associating Wilson with a distinctly counterrevolutionary project.[11] Wilson, according to Mayer, intervened in the Russian Civil War as a defender of capitalism against Bolshevism. (Actually, Wilson sent American troops to keep an eye on Japanese expeditionary forces while searching for allies of imperial Germany.) Wilson is also seen to have invoked democratic internationalism as a tool in his struggle against Marxist revolutionaries in Hungary, Germany, and Austria. Cold-War liberal Irving Kristol, in the first issue of *The National Interest*, also refers to the world-historical confrontation between the followers of Wilson and Lenin.[12] Again one may be justified in looking for vested interests among those who offer this choice. In a syndicated column, Ben Wattenberg, another Cold-War liberal, exhorts Americans to go ''back to our prime mission, making the world safe for democracy.''[13] There may be nostalgia activating New Deal-Humphrey Democrats when they appeal to the social democratic interventionism of yesteryear, before the McGovernites turned the welfare state from international crusades to programs of social therapy at home.

Morton Kondracke's recent essay in *The New Republic* ''The Democracy Gang,'' serves up the same Wilsonian phrases in defense of a ''pro-democracy foreign policy.''[14] Kristol, Wattenberg, and Kondracke all entrust their Wilsonian enterprise to the National Endowment for Democracy, an institution that is federally subsidized and whose major beneficiary has been the A.F.L.–C.I.O. Seizing on Wilsonian rhetoric and goals to justify the public financing of labor union activities in both Latin America and Asia is not an attempt to combine unlike things. Wilson tilted the federal government toward organized labor and intervened in Mexico in the hope of exporting democracy. He also benefited from good relations with certain segments of the emerging trade union movement. In the First

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World War he received the support of Samuel Gompers and of their leaders of the A.F.L. in setting wages and imposing collective bargaining. Gompers also cooperated with a grateful government, and particularly with the War Labor Board, in isolating recalcitrant opponents of America's crusade for democracy.[15]

Another contributing factor to Cold-War liberal infatuation with Wilson is the combination in his career of Anglophilia and Teutonophobia. As an exponent of English parliamentary government, Wilson was associated at Princeton University with the Imperial school, which stressed the cultural and political ties between England and America. What he most respected about England, however, rather than its monarchical and aristocratic traditions, was its growth into a modern democracy. His model English leader was the liberal prime minister William Gladstone, who came to embrace the principles of popular government.[16] Unlike such traditionalist Anglophiles as T. S. Eliot and Russell Kirk, Wilson applauded the English for progressive reasons that Cold-War liberals can also accept.

His struggle on the side of England against imperial Germany's "warlords" continues to appeal to a generation that views the world as it was—or as they imagine it was—in 1940. As a reunified Germany becomes a possibility, American journalist Jim Hoagland of *The Washington Post* has joined numerous establishment intellectuals in finding continuities in German history.[17] Hoagland assumes that the Third Reich's totalitarian horrors were implicit in Bismarck's pseudo-constitutional Second Empire and even more dramatically foreshadowed in Kaiser Wilhelm's premeditated war for world domination.

It may be spitting into the wind to point out how tenuous these continuities are. *Griff nach der Weltmacht* (1963), the book by the historian Fritz Fischer that claims to demonstrate such connections in spirit and war aims between the Germanies of 1914 and 1939, is full of unwarranted conjectures that have been refuted *ad nauseam.*[18] Throughout his book Fischer confuses two entirely dissimilar positions: the annexationist programs for Central Europe put forth by the German chancellor and German parliamentary leaders after the First World War had already broken out or while Germans were earlier preparing for a two-front war that they thought was inevitable; and Hitler's plan, revealed already in *Mein Kampf,* for a revolutionary reconstruction of the Eurasian landmass to provide *Lebensraum* for the Aryan race. In the first case we are dealing with an attempt to prevent another encirclement of Germany, which, it was hoped, could be avoided by taking away strategically useful territory from Germany's present enemies or from its probable future ones.[19] Unlike the government of imperial Germany, however, the Nazis sought to give flesh to a plan of human as well as territorial reconstruction. Hitler's state expanded as a function of its revolutionary mission, not because of any fatalistic or diplomatically inept leadership. The difference in treatment of the Eastern European Jewish population under German occupation in the two wars, being given food and army-related positions

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in one case and being exterminated in the other, should give the lie to any efforts to equate civilized and uncivilized regimes.

Moreover, if George F. Kennan's *The Fateful Alliance* is correct, the Germans by 1894 faced a hostile encirclement by France and Russia that developed independently of German diplomatic ineptitude. It is known that imperial Germany alienated England when it embarked on a naval program in the late 18902, one that seemed to threaten England's maritime supremacy. But this program, according to Kennan, did not result in Germany's encirclement on the continent, which occurred for other reasons. Tsar Alexander III considered war with the Germans as inevitable and allowed his country to be pushed by the French into confrontation with France's longtime enemy, Germany-Prussia.[20]

Contemporary Teutonophobia continues to feed Wilson's popularity. In the March 1987 issue of *Commentary,* the classical historian Donald Kagan, treading on alien scholarly ground, insists on the isomorphic nature of the three major struggles of the twentieth century, between democracy on the one side, and Kaiser Wilhelm, Hitler, and Stalin, all on the other.[21] Kagan leaves no doubt that he finds moral equivalence between the governments of Hitler and the Kaiser, and he strongly scolds interwar historian Sidney Fay for denying what Wilson understood: the incommensurability between democratic and nondemocratic societies. Like Walter Berns, Kagan asserts that democratic governments are neither aggressive nor inclined to fight wars with each other. It may be helpful to explain the reason: Such modern states have turned wars into "crusades for democracy" while designating those they fight, even constitutional monarchies in 1917, as antidemocratic foes. Teutonophobia, ironically, has not kept its captives from taking their bad habits from the Germans, including a fondness for economic collectivism and a tendency to identify nationhood with bureaucratically controlled national life. Red Prussianism may have started with Marx and Engeles, but has also numbered among its representatives John Dewey and Woodrow Wilson. These and other outspoken critics of the Germans have fallen effortlessly into worship of the "STATE" whenever they wish to deplore the predominance of unenlightened interest in civil society.[22] What they typically glorify is not the true Hegelian state, as a protector of classes and communities, but a vulgar imitation characteristic of the Hegelian Left, the welfare state as a chosen instrument of social leveling combined with hymns to public-spirited administration.

The historian John Lukacs perceives another aspect of the Lenin-Wilson polarity, when he identifies one of the antagonists with internationalism and the other with nationalism. Lukacs goes on to note that Wilson's cause has proved to be the stronger, more devastating one in the present century, representing an overriding quest for *Gemeinschaft.*[23] I believe that Lukacs is on to something, providing one recognizes that Wilsonianism is a double-edged sword, with both nationalist-imperialist and global democratic sides. Global democratic worshipers of Wilson

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are often embarrassed that he imposed racial segregation on the federal civil service and made uninhibitedly anti-Semitic remarks. He was also deeply respected by the fiercely integralist Polish nationalist and father of the Polish National Democrats, Roman Dmowski. Though Wilson expressed reservations about the intensity of Dmowski's anti-Semitism (but not about his hatred of Germans), the nationalist leader praised Wilson as a liberator of oppressed Slavic people.

The nationalist ideal that Wilson fostered was democratic in a certain sense but not liberal—despite his belief in international free trade (under Anglo-American supervision).[24] The two sides of Wilson's legacy, globalist and nationalist, correspond to the duality inherent in his own thinking. Universal egalitarianism and national homogeneity are both ideals that have come to the fore in postliberal democratic movements. The Wilsonian project of restructuring civil society through an activist national state can lead into either of two plans that may be derived from Wilsonian ideals: supranational social engineering or the mobilization of certain nations said to represent the forces of good against other nations held to be thoroughly evil.

From 1917 on, Wilson pursued both plans at the same time. When America entered the First World War on April 10, 1917, Wilson made it clear that America was fighting Germany's leaders, not its people. One may put aside how Wilson brought his country into that war, particularly the machinations of his fervently Anglophile Secretary of State, Robert Lansing. It was Lansing who persuaded the English and French to submit harsh peace proposals in response to Wilson's attempts in December 1916 to mediate between the two sides. Lansing deliberately drove the Germans to desperation when they were looking for peace at the end of 1916. Because of Lansing's intervention, the Germans found no reasonable terms forthcoming from their enemies and tried to break the British blockade of their country by resuming unrestricted submarine warfare.[25] The British blockade had brought starvation to the Germans but had also made them willing to negotiate a peace. Without the chance for an honorable peace, the German government decided on a desperate measure, torpedoing vessels headed for British ports in order to force the British into moving their ships closer to home and into lifting the blockade. The vulnerability of the outnumbered German submarines, however, required them to attack without surfacing, and therein lay problems for the German side. This policy resulted in the destruction of American vessels that allowed Wilson to rally the Congress around a declaration of war against Germany.

Once America had entered the war, Wilson spoke frequently about his country's "high, disinterested purpose." Americans were fighting neither for gain nor for victory. They were prosecuting a "people's war" that would give birth to a new form of politics.[26] On June 5, 1914, Wilson had already pointed the way toward this future when he explained that "the new things in the world are divorced from force. They are the moral compulsions of the human conscience."[27] On May

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26, 1917, moreover, he returned to his earlier vision that "the brotherhood of mankind must no longer be a fair but empty phrase." This time, however, Wilson added that it must be given "a structure of force and reality." To peace overtures from the Germans calling for a return to the status quo ante bellum, he responded in the same speech by linking "this iniquitous war" to the status quo from which it had come.[28]

Wilson suggests in *The Fourteen Points* and in other statements of his peace goals that the war was not over annexations but over "the standards of international political conduct." But, as Harold Nicolson shows in *Peacemaking 1919*, when push came to shove, Wilson repeatedly rationalized the deviations from the new standard of international conduct. At the peace negotiations at Versailles, in January 1919, he offered only feeble protests when millions of Germans and Austrians were handed over to the victorious states and to their clients. Nicolson attributes Wilson's acceptance of this betrayal of a peace without annexation to his ignorance of European territorial rivalries. He also notes Wilson's expressed hope that a League of Nations would eventually rectify the provisional injustices caused by the Treaty.[29]

But what Nicolson does not take into account is the Manichaean fashion in which Wilson, once having resolved upon war, came to view the other side. Though Wilson initially spoke of making war on the "masters of Germany" but not its people, the distinction in his own mind became rapidly blurred. The war became a confrontation between the American people and its allies standing for "democracy," "liberty," and "human rights," and their thoroughly "iniquitous" opponents. "There are American principles, American policies," Wilson announced in January 1918. "We stand for no others. They are the principles of mankind and must prevail"[30] In June 1917, the German and Austrian peoples were still seen merely as subjects of "the military masters of Germany," though Wilson stressed the difficulty created by the mass indoctrination that had led to such dangerous servitude. On January 13, 1919, Wilson wrote to a congressman from Kentucky explaining the principle by which the American relief organization was distributing food to starving Europeans. The food was being sent in a war against Bolshevism, but not to Austrians or Germans (who were still subject to the British blockade). It was going to "our real friends in Poland" and to "the people of the liberated countries of the Austro-Hungarian Empires."[31] The only people Wilson felt morally obligated to feed were those who had fought on *his* side in the war. By 1919 no longer governments but peoples were to blame for the "iniquitous" outrages that had forced his nation to take up arms in a holy cause. Food became a weapon with which to pursue ideological ends, as can be seen by the way in which Wilson's director of European relief at the end of the War, Herbert Hoover, distributed food in Central and Eastern Europe. Hoover's correspondence with Wilson makes clear that food distribution was viewed by

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both of them as a means of bringing to power regimes that they liked. In Poland, for example, food diplomacy meant forcing on a reluctant populace Wilson's own choice of premier Jan Paderewski (who lasted less than six months), at the expense of the popular national liberator, Joseph Pilsudski.[32]

Such concern with ensuring doctrinally acceptable government coalesced in Wilson's mind with the increasingly sinister image of the enemy that he had formed by the end of the war. As late as September 4, 1919, in a speech primarily devoted to the League of Nations, Wilson dwelled on the iniquitousness of the German people. It was appropriate, he noted, that Articles 227 through 231 of the Treaty of Versailles stressed German war guilt, an emphasis introduced to justify unspecified reparations: "The Treaty seeks to punish one of the greatest wrongs ever done in history, the wrong which Germany sought to do to the world and civilization."[33] The Treaty, then, was intended as a form of "punishment" for a nation, not simply for its wartime leadership. After all, Wilson had compelled the Germans in November 1918 to replace their monarchy with a government he approved of. Even so, it was the German nation rather than its leaders that he thereafter took satisfaction in punishing.

Wilson indeed had the tendency to turn political decisions into grave moral judgments. His systematic segregation of blacks in the federal government went beyond the attempt to accommodate diehard segregationists in the Democratic Party. Wilson undertook at his own initiative to segregate and even demote blacks in post office jobs across the country, "for their benefit," that is, for their separate racial development.[34] His own politics never lost its universal, redemptive character, whether he was engineering black racial consciousness or fighting with good nations against bad ones in a democratic crusade to change the world. As Americans it behooves us to reassess the Wilsonian democratic legacy. More than an ephemeral aspect of our national past, it may be the fate that we have never escaped.

NOTES

1. John Taft, *American Power* (New York: Harper and Row, 1970).
2. Herbert Hoover, *The Ordeal of Woodrow Wilson* (New York: McGraw Hill, 1957), especially the introductory chapter.
3. Robert Nisbet, *The Present Age* (New York: Harper and Row, 1988), 29–33. On the revolutionary implications of Wilson's refounding of America, see Paul Eidelberg, *A Discourse on Statesmanship* (Urbana: University of Illinois Press, 1974), 292–94, 314–17.
4. Woodrow Wilson, "The Study of Administration," *The Political Science Quarterly* 11 (June 1889): 197.
5. Woodrow Wilson, *The New Freedom* (New York: Doubleday, Page, and Co., 1914), 284.
6. See Murray N. Rothbard, "World War I as Fulfillment: Power and the Intellectuals," *The Journal of Libertarian Studies* 9.1 (Winter 1989): 81–125; and Robert Higgs, *Crisis and Leviathan* (New York: Oxford University Press, 1987), 123–158.
7. On Croly's odyssey as a state planner, see David W. Levy, *Herbert Croly of the New Republic* (Princeton: Princeton University Press, 1985).
8. Cited in Rothbard, 97.

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9. See Charles Hirschfield, "Nationalist Progressivism and World War I," *Mid-America* 45 (July 1963): 149.
10. *The New Freedom*, particularly the dedicatory page calling for the "Emancipation of the Generous Energies of a People" waiting to do "Public Service."
11. Arno J. Mayer, *Wilson vs. Lenin: Political Origins of the New Diplomacy: 1917–1918* (New York: Meridian, 1964).
12. Irving Kristol, *The National Interest* 1 (Fall 1985): 6–15.
13. Ben Wattenberg, "Back to Our Prime Mission," syndicated in *The Washington Times*, 9 March 1989, F3.
14. Morton Kondracke, "The Democracy Gang," *New Republic*, 6 November 1989, 30.
15. On Gompers, organized labor, and Wilson's war government, see Ronald Radosh, *American Labor and United States Foreign Policy* (New York: Random House, 1969), 58–71; and Murray N. Rothbard, "War Collectivism in World War I," in *A New History of Leviathan: Essays on the Rise of the American Corporate State* (New York: Dutton, 1972), 66–110.
16. See John Garraty, *Woodrow Wilson* (New York: Alfred A. Knopf, 1956), 5–7, 21; and William Diamond, *Economic Thought of Woodrow Wilson* (Baltimore: Johns Hopkins University Press, 1943), 50–53.
17. For samples of the anxious murmurs about the German threat and the threat of German character that have accompanied talk of German reunification, see Jim Hoagland "Reunification Qualms," *The Washington Post*, 26 December 1989, A-23; and by the same author, ibid., 11 November 1989, A23. For a critique of these attitudes, see Franz M. Oppenheimer, "Treacherous Signposts for the Alliance," *The WORLD & I* 3.8 (August 1989): 131–36.
18. See the English edition of Fischer's work *Germany's Aims in the First World War* (New York: W. W. Norton, 1967), and the unqualified praise in the introduction by Hajo Holborn.
19. A compendium of all the critical insights about the gaps and deficiencies of the Fischer thesis can be found in my own "History or Hysteria," *The American Spectator* (January 1975): 16–18.
20. George Kennan, *The Fateful Alliance* (New York: Pantheon Books, 1984), especially 116–35.
21. Donald Kagan, "World War I, World War II, World War III," *Commentary* 83 (March 1987): 212–40.
22. On Dewey's adaptations of Hegelianism, see Richard Bernstein, *John Dewey* (New York: Washington Square Press 1966), 11–16. Wilson's evolutionary view of the historical process, culminating in a "democratic administrative" regime, is cribbed from the work of both Hegel and the German jurist Rudolf Gneist and outlined in his first book, *The State* (Boston: D. C. Heath, 1889). For a view of Hegel as an old-fashioned constitutionalist rather than democratic statist, see Paul Gottfried *The Search for Historical Meaning* (DeKalb: Northern Illinois University Press, 1986), 3–19.
23. See John Lukacs, *Outgrowing Democracy* (New York: Doubleday and Co., 1984), 223.
24. Ibid., 224–25. Lukacs brilliantly depicts the contradictions in Wilson's character and thinking, especially between his "preternaturally old" Victorian and Anglophile mindset and his claims to being a progressive internationalist.
25. Surprisingly, these facts are revealed in, among other places, A. S. Link's generally laudatory essays in *The Higher Realism of Woodrow Wilson* (Nashville: Vanderbilt University Press, 1971), 40–45. On the effects of the British blockade, see C. Paul Vincent, *The Politics of Hunger: The Allied Blockade of Germany 1915–1919* (Columbia: Ohio University Press, 1985).
26. *The Public Papers of Woodrow Wilson*, ed. Ray Stannard Baker and William E. Dodd (New York and London: Harper and Brother, 1927), vol. 1, 51.
27. Quoted in Harold Nicolson, *Peacemaking 1919* (New York: Harcourt, Brace, and World, Inc., 1965), 38.
28. *The Public Papers of Woodrow Wilson*, 1:50.
29. *Peacemaking 1919*, 36–37, 202–05.
30. Ibid., 38.
31. *The Public Papers of Woodrow Wilson*, 1:389.
32. See Murray N. Rothbard, "Hoover's 1919 Food Diplomacy in Retrospect" in L. Gelfand, ed. *Herbert Hoover: The Great War and Its Aftermath, 1914–1923* (Iowa City: University of Iowa Press, 1979), 89–110; and Hoover, *The Ordeal of Woodrow Wilson*, 120–29, 151–57.

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33. *The Public Papers of Woodrow Wilson,* 1:590. At least some of this Teutonophobia may have resulted from the conversation between the impressionable Wilson and his advisor, Edward House. Though Wilson broke with House over the Treaty of Versailles, which House found to his liking, House's support of Allied war aims may have influenced Wilson, even after the rupture in their friendship. See Lawrence I. Gelfand, *The Inquiry* (Westport: Greenwood Press, 1963).
34. Arthur S. Link, *Woodrow Wilson,* vol. III, *The New Freedom* (Princeton: Princeton University Press, 1956), 244–54.

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